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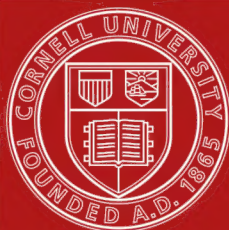
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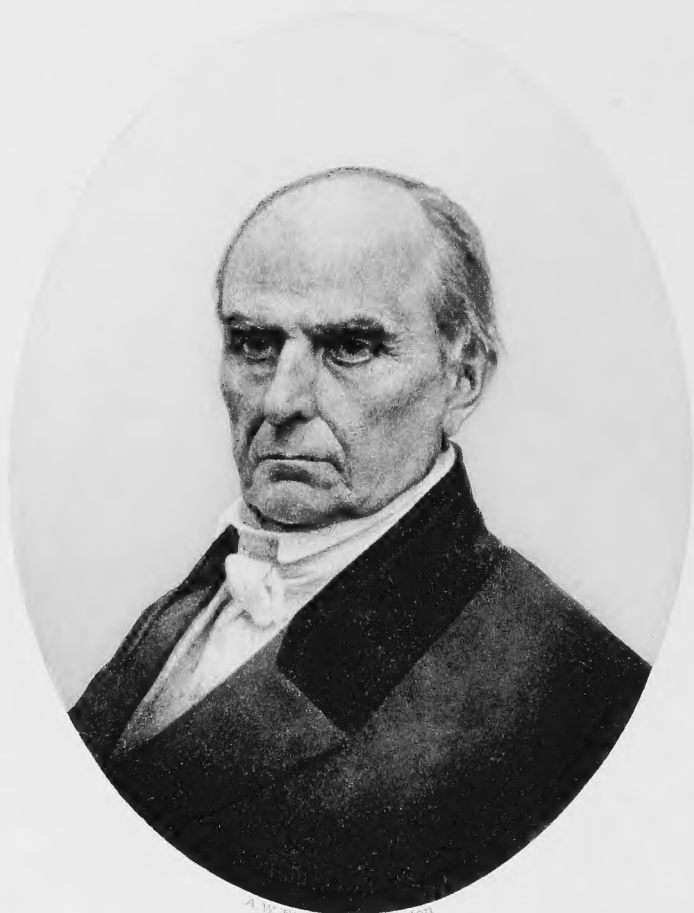
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THE
WRITINGS AND SPEECHES
OF
DANIEL WEBSTER

National Edition

VOLUME FOURTEEN

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Daniel Webster

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THE WRITINGS AND
SPEECHES
OF
DANIEL WEBSTER

IN EIGHTEEN VOLUMES



VOLUME FOURTEEN

The Writings and Speeches of
DANIEL WEBSTER
HITHERTO UNCOLLECTED
VOLUME TWO · SPEECHES
IN CONGRESS AND
DIPLOMATIC PAPERS
NATIONAL EDITION · Illustrated
with Portraits and Plates



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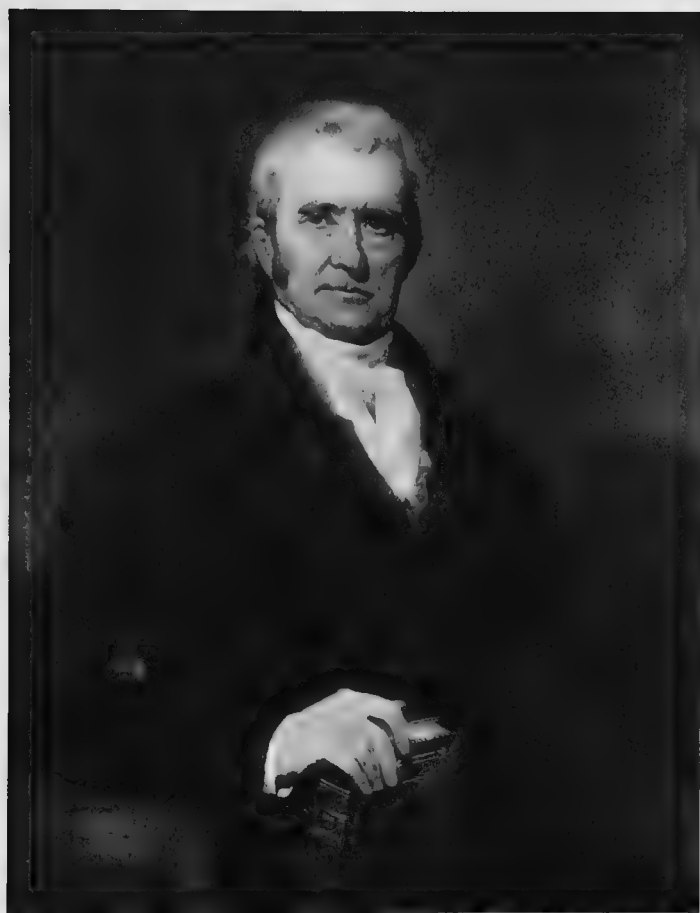
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Speeches in Congress Hitherto Uncollected

VOL. II. — I

John Marshall

From the original Painting by Henry Inman, in the possession of
the Philadelphia Law Association



Portrait of John Jay, 1790

Resolutions on the French Decrees

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
June 10, 1813.¹

MR. WEBSTER, of New Hampshire, wished to call the attention of the House to a subject which he thought important. It would be recollected that towards the close of the last session of Congress, a communication was received by the House of Representatives from the President, transmitting certain correspondence between the Government and the late Minister in France. This communication was made in compliance with a call of the House. A prominent feature in that correspondence, was the information it contained, of the declaration of the French Minister of Foreign Affairs to Mr. Barlow, that the decree of April, 1811, purporting to be a repeal of the Berlin and Milan decrees, although not *published* at the time of its date, had nevertheless been communicated to Mr. Barlow's predecessor, and had also been transmitted to the French Minister in America, to be communicated to this Government. This declaration affected — probably the House — certainly the country — with great surprise. Nothing had since been made public which removed the cause of this surprise, or in any way changed the very extraordinary aspect which this portion of our foreign relations bears. He asked leave, there-

¹ Mr. Webster's first Speech in Congress. When his Collected Speeches were first published Chief Justice Marshall expressed disappointment at not finding it in the volume. Although he did not know Mr. Webster at the time when the speech was delivered, it strongly attracted his attention, and he afterwards said to Judge Story: "I was so much struck with it that I did not hesitate to state that Mr. Webster was a very able man, and would become one of the very first statesmen in America, and perhaps the very first." The Resolutions and a brief abstract of the Speech appeared in the Annals of Congress. The report here printed, a much fuller one, is taken from "The Boston Messenger."

6 Speeches Hitherto Uncollected

the case of the orders in council from the other causes of complaint, to make them the topic of distinct discussion, and upon their revocation to restore the intercourse of the two nations to its former state. As ground for demanding this revocation, the United States alleged that France had repealed her decrees of Berlin and Milan. "The United States maintain," said the Secretary of State to Mr. Foster, "that France has revoked her edicts, so far as they violated their neutral rights, and have on that ground particularly claimed, and do expect of Great Britain, a similar revocation."

The British Government denied the fact of this revocation on the part of France, and this became the point particularly in controversy.

Everybody remembers the novel mode of proof resorted to on this occasion. The question was, whether certain laws, or decrees, of the French Government had been repealed. This could only have been done by another law or decree, emanating from the same authority, and passed for the purpose of such repeal. No such repealing decree, however, was produced. The point was left to be decided, and was decided, upon evidence of a very inferior and uncertain nature. The United States relied upon a diplomatic note from the French Minister to General Armstrong. Against this, Great Britain produced the Emperor's speech to the deputies of the Free Cities. On one side, was a letter to the Grand Judge; on the other, a report to the Minister of Foreign Relations. The Duke of Cadore was cited as authority one way; the Duke of Massa was cited as authority the other way. It was also alleged on one side, that no vessels had been condemned under the decrees, since the period of their supposed repeal. On the other side, it was shown that many vessels had at least been seized under them, since that period. The "Good Intent" and the "Two Brothers" were supposed to prove the repeal, and to establish the point of French amity and sincerity. The "General Eaton" and the "Lady Green," it was contended, proved the contrary.

It was in this manner — by the collection of scraps, made up of ambiguous declarations, of loose sayings, of diplo-

matic notes susceptible of different interpretations, and of doubtful and disputed matters of fact — that the plain question was to be settled, whether certain public laws of the French Empire had been repealed?

The controversy between the United States and England went on, as is well known, in this manner (which would have been sufficiently ludicrous, if the subject had not been so important) till it was terminated by the declaration of war, and upon the declaration of war, the repealing decree made its appearance!

England had been constantly calling for some regular, authentic act of the French Government, showing the revocation, — for that act, whatever it was, which professed to be the operative instrument of repeal; in short, for just such an act as the decree of April, 1811, purports to be. She urged, that if the decrees were really repealed, it must have been done by law, and nothing could be easier than to produce the law. This call was repeated, again and again, nor did the correspondence on the subject close, between the United States and Great Britain, until more than a year after the date of the repealing decree.

Now, sir, while we are inquiring where this decree could have so long slumbered, in what recess it could have lain — mere *brutem fulmen* — for a twelvemonth, or what could possibly be the motive for so strange a concealment, we are met by the express declaration of the French Government, that this decree, so much called for, and so impossible to obtain, had been all the while in the American bureau in Paris, and had also been seasonably transmitted to the United States!

These, sir, are the circumstances under which the present call for information is proposed. We owe it to the reputation of our ministers abroad, we owe it to the character of our Government at home, and, more than all, we owe it to the honor of the nation to improve the earliest opportunity of making a full and free inquiry into a subject of so much importance, and wearing at the present moment so very singular an appearance.

On the President's Message Relative to the French Decrees

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 3, 1814.

MR. WEBSTER of New Hampshire said that it would be remembered that, at the last session, a Message was received by the House from the President, in answer to certain resolutions of the House, relative to the repeal of the French decrees. This Message was referred to the Committee of Foreign Relations, who made their report. On this report the House did not act at that session. I now rise, said Mr. Webster, for the purpose of submitting a motion, which shall again bring the subject before the House. I mean, sir, that the Message and the report of the Committee of Foreign Relations thereon, be again referred to the same. I understand such a reference, or some similar proceeding, to be necessary, in order to bring the subject again regularly before us. I am induced to this, as well by the intrinsic importance of the matter contained in the report of the Secretary of State, as by an unwillingness that the manner in which the resolutions of the House were answered on that occasion should quietly pass into a precedent. I deprecate the idea, that when this House, which is the inquest of the nation, calls for information on certain specific points, the call is to be answered by an elaborate argument, and that such argument is to be holden to be conclusive on the judgment of the House and of the nation.

The subject to which the Message and the report of the Secretary relate, has lost none of its importance. It remains an object of great interest, to those especially who have been and still are dissatisfied with the professed grounds of the war.

This House, by an almost unanimous vote, has recently expressed its sense of the necessity of an inquiry into the causes of the failure of our arms. I agree, sir, with the general sense of the House, and with what I am persuaded is equally the general sense of the community. It is doubtless necessary to know if there be not something wrong or defective in the conduct of the war. But is it not equally important to inquire, if there were nothing wrong or defective in the original commencement of it? May it not have been ill-judged and ill-timed in the beginning, as well as ill-conducted since? There may be, sir, a want of better armies and better generals. Let us inquire if there be not also the want of a better cause — I mean a cause that stands clearer in regard to the justice and necessity of the war; a cause that approves itself better to the judgments and consciences of those whose efforts are indispensable to its vigorous prosecution. If its advocates can show satisfactorily that this war was undertaken on grounds plainly and manifestly just; if they can show that it was necessary and unavoidable; if they can show that it is strictly an American war; that it rests solely on American grounds; and that it grew out of a policy just and impartial, as it related to the belligerents of Europe — if they ever make all this manifest, the war will change its character. It will then grow as energetic, as it now is feeble. It will become the cause of the people, and not the cause of a party. The people would then maintain their own cause, with vigor and effect. In such a cause, Government would have nothing to do but to direct the spontaneous action of the community. It now has to create that action, by the application of every artificial stimulus that can be invented. In such a cause, we should not have been, at the end of two drivelling campaigns, farther from our object — the conquest of Canada — than when we began. No, sir, Canada, to the walls of Quebec, would have been yours in thirty days, if the cause had been one with which the whole people had been satisfied, and which they had espoused with ardor.

The Speaker here said, that it was necessary, before further discussion, for the House to decide whether it would now consider the motion.

10 Speeches Hitherto Uncollected

Mr. Webster was not aware that such vote of consideration was necessary, on a mere motion to refer a subject. If such, however, were the course, he should submit to it.

Mr. Webster's motion, which originally contemplated a reference of the subject to the Committee of Foreign Relations, was so modified as to propose a reference to a Committee of the Whole.

And the motion to refer the same to a Committee of the Whole, was agreed to.

Upon Mr. Wright's Resolution Concerning the Punishment of Treason

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 10, 1814.

MR. WEBSTER said, that if the proposition were to consider whether it was necessary to provide additional legal punishments for any description of offences, he should see no objection to the reference of the subject to a committee. If illegal intercourse existed with the enemy, he should go as far as any one in applying constitutional remedies to that evil. But this resolution¹ proposes, in effect, to consider whether it is not expedient to try accusations for treason before military instead of civil tribunals. However glaring may be the idea, yet such is in truth the real nature of the proposition. It is to change the forum for the trial of treason. The mover of the resolution, and the gentleman from the State of Georgia (Mr. Troup), have not left any doubt on this subject. They have alluded to cases which they suppose the resolutions to embrace, and for which they deem it necessary to provide military punishment. But what is the nature of those cases? Are they not cases of treason? It is said information has been communicated to the enemy, very material to him, respecting the operations of our own forces, by citizens of the United States. Signals are said to have been made for this purpose on the St. Lawrence and elsewhere. Do gentlemen suppose that the act of communicating to the enemy important intelligence, whether by signals or otherwise, whereby he is the better able to defend

¹ *Resolved*, That a Committee of the whole House be instructed to inquire into the expediency of extending the second section of the Act for the establishment of rules and articles for the government of the armies of the United States, relative to spies, to the citizens of the United States.

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himself, or attack his adversary, is not treason? Is not this giving to the enemy aid and comfort? May it not be in many cases the most important service which can be rendered him? Certainly, sir, all such offences as gentlemen have mentioned are provided for by law, and adequate penalties annexed to the commission. The simple question before us is, whether we will consider the propriety of taking the power of trying for these offences from the courts of law, where the Constitution has placed it, and confer it on the military. Sir, the proposition strikes me as monstrous. I cannot consent to entertain the consideration of it even for a moment. It goes to destroy the plainest constitutional provisions. If it should prevail, I should not hesitate to pronounce it a most enormous stride of usurpation. Nothing, in any Government called a free one, even in the worst of times, has exceeded it. I am utterly shocked at the arguments offered in favor of it. When the mover was asked why, in the cases he mentioned, the offenders could not be punished for treasonable practices, I understood him to answer, that on trials for treason in the courts of law, the testimony of two witnesses is required; but if the trial could be transferred to a military tribunal, the two witnesses could be dispensed with. Are we now gravely to consider upon a proposition, of which this is among the professed objects? The gentleman from Georgia (Mr. Troup) observed, that when persons had been apprehended for offences, they had been rescued by *habeas corpus*, issued by the civil magistrate. And are we to deliberate whether it be not proper for us to prevent the delivery of the citizens of this country from illegal arrests and imprisonment by the interposition of their great constitutional remedy, their writ of *habeas corpus*? The Constitution contains no provision more valuable; it makes no injunction more direct and imperative than those respecting trials for treason, and the benefit of the *habeas corpus*. Treason is not left to be defined, even by the highest courts of law. It was foreseen that, in times of commotion, victims might be sacrificed to constructive treason; that doctrine which, in other places and other times, has shed so much innocent blood, and which brought Algernon Sydney to the scaffold. The Constitution,

therefore, defines treason, and prescribes the mode of proof. But what is there in the worst cases of construction of treason that can be compared, in point of enormity, to the proposition now before us? This is not to give a latitude of construction to the judge; it is to take the cause away from the judge, and carry it to the camp. Instead of indictment, arraignment, and trial, it proposes the summary process of martial law. If the proposition should pass into a law, it takes away the constitutional definition of the offence; it takes away the prescribed mode of proof; it takes away the trial by jury; it takes away the civil tribunal, and establishes the military. On a resolution of this sort, I cannot believe the House will consent to deliberate.

Remarks on the Turreau Letter

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 12, 1814.

MR. ROBERTS of Pennsylvania moved the following resolution :

“Resolved, That the President be, and he is hereby, requested to cause to be laid before the House, any correspondence with, or communication in writing from, the late Minister of France, resident at Washington, on or about the 14th of June, 1809, or subsequently with his successor M. Serrurier, prescribing or declaring the terms and conditions upon which their Sovereign would consent to treat of amity and commerce with the United States, if any such correspondence or communication be in the possession of the Executive; and, if none such be in the possession of the Executive, that the President be, and he is hereby, requested to inform this House, unless the public interest forbid such disclosure, whether there has not been such a correspondence or communication, which was withdrawn from the archives of the Department of State, and, if so, when and how the same was so withdrawn.”

Mr. Webster of New Hampshire, avowing a wish that, if the inquiry was made it should be effectual, which he conceived it could not be under the present motion, moved to amend the motion by striking out from the word “*Resolved*” to the end thereof, and substituting the following :

“That a committee of this House be appointed to inquire into the manner in which, and time when, a letter purporting to be a letter from the French Minister to the Secretary of State, dated on or about the 14th of June, 1809, was withdrawn from the possession of the Department of State, and how it came into the possession of a member of this House; with powers to send for persons and papers, and they report the evidence to the House.”

Mr. Webster said that gentlemen had attempted to diminish the importance of this inquiry, and cast a character of lightness and indifference on the subject. The force of ridicule has been tried, but that weapon must be used by rarer talents, and a more powerful hand than this occasion has called into exercise, before it can affect the intrinsic importance of this subject. If the preservation of national character and national spirit; if the cherishing of manly, independent, and elevated sentiments in the Government and in the country are matters of any moment, then this inquiry is important.

It was not, however, his intention to go into the subject generally, but to confine his remarks to the amendment proposed. The present question is, as to the manner of investigating the business. The resolution proposes an inquiry of the Executive. The amendment proposes to inquire by a committee of the House, with directions to report the evidence. What are the circumstances which call for inquiry? A member of the House states, in his place, that he has evidence which induces him to believe, that a letter, affrontive and insolent in its object and character, was written by the French Minister to the Department of State; that the Government received that letter, and, instead of repelling the affront with becoming spirit and dignity, undertook to solicit and supplicate the author that he would take it back; that he decisively refused to do so, saying that he had written the letter with great deliberation; that it was registered in the records of the Embassy; that a copy had been despatched to his Government, and that the letter could not be retracted. That afterwards, when certain political purposes were supposed to be answered, this letter, in some way or another, was withdrawn from the office of State, and that no traces of it now remain there. The gentleman even produces the letter, as translated in the office, and offers it to the view of the House. Of the facts here stated, the honorable gentleman declares his readiness to procure evidence, and wishes the House to obtain it, through a committee clothed with proper powers.

The mover of the present resolution, manifesting by his resolution his sense of the importance of some inquiry, speaks with

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emphasis of the necessity of ascertaining the manner in which this letter was obtained from the Department of State. He speaks of it as a purloined paper. He does not, indeed, intimate that the gentleman from Maryland did not come into possession of it in a manner altogether correct and honorable, but he seems to suppose that it must have escaped from the office of State, originally, in some unjustifiable manner; by improper disclosures of the official secrets, or breach of trust in somebody.

This being the present state of the case, may not every one see the delicacy of a direct inquiry of the Executive? Must not every one, also, see the perfect futility of such an inquiry? What answer but one can be expected, when the Executive is asked whether this letter was taken back by the author in consequence of any such request as has been mentioned? Certainly, the House can hardly think of inquiring into such a fact or such a question; nor would it consist with the sense of justice which actuates the House to prepare such an inquiry, for the purpose of giving an opportunity of exculpation by inculcating others. The House ought to adopt a course which shall obtain the whole evidence fully and fairly. We do not need official commentaries and glosses, nor the panacea of an Executive report. It ought to adopt a course that shall bring to its own view an undisguised state of the case, and spread out all the facts, unmixed with opinions. To this end, what course so proper as the appointment of a committee with full powers to collect the evidence and report it? Such inquiry will exclude nothing. Any document, or proof of any kind which the Department can afford, will be received. And if the gentleman from Pennsylvania (Mr. Roberts) is serious in his determination to prosecute a thorough inquiry, why not meet the proposition contained in this amendment, which I propose with the assent of my friend from Maryland? Cannot the House trust itself? Does it suspect its own justice? Does it apprehend that any man's reputation might suffer in its hands? If not, on what ground can an inquiry be resisted, which is of a nature to lay all the evidence before the House? Such an inquiry is now offered. The gentleman from Maryland has repeatedly assured

the House that evidence is ready to be tendered, if the House will authorize its committee to receive it; and that sources will be pointed out, if the House will authorize its committee to explore them. He asserts this upon the responsibility of his character and his station. He calls on the House, having received this information, out of regard to its own character and its own duty, to make an inquiry by its own means, and in strict compliance with its constitutional powers. I know nothing of the facts of the case; but I feel the force of this call, under such a statement, made in his place by an honorable member of the House. If the amendment prevail, the investigation will be something more than nominal. It will be such an inquiry, and such only, as ought to satisfy either the House or the country.

The Encouragement of Enlistments

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 14, 1814.¹

MR. SPEAKER, — It was not my intention to offer myself to your notice on this question. I have changed my purpose only in consequence of the course, which the debate took yesterday, on an amendment proposed by me, to one of the subordinate provisions of this bill.² The observations to which that occasion gave rise have induced me to prefer assigning my own reasons for my own vote, rather than to trust to the justice or charity of the times to assign reasons for me.

The design of this bill is to encourage, by means of a very extraordinary bounty, enlistments into the regular army. Laws already existing, and other bills now in progress before the House, provide for the organization of an army of sixty-three thousand men. For the purpose of filling the ranks of that army, the bill before us proposes to give each recruit a bounty of one hundred and twenty-four dollars, and three hundred and twenty acres of land. It offers also a premium of eight dollars to every person, in or out of the army, citizen or soldier, who shall procure an able-bodied man to be enlisted.

Before, sir, I can determine, for myself, whether so great a military force should be raised, and at so great an expense, I am bound to inquire into the object to which that force is to be

¹ Speech on "A bill making further provision for filling the ranks of the regular army, encouraging enlistments, and authorizing the enlistments for longer periods of men whose terms of service are about to expire."

The first speech in Congress by Mr. Webster which was fully reported.

² Mr. Webster had moved to strike out of the section allowing to the recruiting officer, or other person, eight dollars for each recruit, the words "or other person."

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applied. If the public exigency shall, in my judgment, demand it; if any object connected with the protection of the country and the safety of its citizens shall require it; and if I shall see reasonable ground to believe, that the force, when raised, will be applied to meet that exigency, and yield that protection, I shall not be restrained, by any considerations of expense, from giving my support to the measure. I am aware that the country needs defence, and I am anxious that defence should be provided for it, to the fullest extent, and in the promptest manner. But what is the object of this bill? To what service is this army destined, when its ranks shall be filled? We are told, sir, that the frontier is invaded, and that troops are wanted to repel that invasion. It is too true that the frontier is invaded; that the war, with all its horrors, ordinary and extraordinary, is brought within our own territories; and that the inhabitants, near the country of the enemy, are compelled to fly, lighted by the fires of their own houses, or to stay and meet the foe, unprotected by any adequate aid of Government. But show me, that by any vote of mine, or any effort of mine, I can contribute to the relief of such distress. Show me, that the purpose of government, in this measure, is to provide defence for the frontiers. I aver I see no evidence of any such intention. I have no assurance that this army will be applied to any such object. There are, as was said by my honorable friend from New York (Mr. Grosvenor), strong reasons to infer the contrary, from the fact that the forces hitherto raised have not been so applied, in any suitable or sufficient proportion. The defence of our own territory seems hitherto to have been regarded as an object of secondary importance, a duty of a lower order than the invasion of the enemy. The army raised last year was competent to defend the frontier. To that purpose Government did not see fit to apply it. It was not competent, as the event proved, to invade with success the provinces of an enemy. To that purpose, however, it was applied. The substantial benefit which might have been obtained, and ought to have been obtained, was sacrificed to a scheme of conquest, in my opinion a wild one, commenced without means, prosecuted without plan or concert, and ending in disgrace. Nor is

it the inland frontier only that has been left defenceless. The sea-coast has been, in many places, wholly exposed. Give me leave to state one instance. The mouth of one of the largest rivers in the eastern section of the Union is defended by a fort mounting fourteen guns. This fort for a great part of the last season was holden by one man and one boy only. I state the fact on the authority of an honorable gentleman of this House. Other cases, almost equally flagrant, are known to have existed in some of which interests of a peculiar character and great magnitude have been at stake. With this knowledge of the past, I must have evidence of some change in the purposes of administration, before I can vote for this bill, under an expectation that protection will thereby be afforded to either frontier of the Union. Of such change, there is no intimation. On the contrary, gentlemen tell us, explicitly, that the acquisition of Canada is still deemed to be an essential object; and the vote of the House, within the last half-hour, has put the matter beyond doubt. An honorable gentleman from Virginia (Mr. Sheffy) has proposed an amendment to this bill, limiting the service of the troops to be raised by its provisions, to objects of defence. To the bill thus amended he offered his support, and would have been cheerfully followed by his friends. The amendment was rejected. It is certain, therefore, that the real object of this proposition to increase the military force to any extraordinary degree, by extraordinary means, is to act over again the scenes of the last two campaigns. To that object I cannot lend my support. I am already satisfied with the exhibition.

Give me leave to say, sir, that the tone on the subject of the conquest of Canada seems to be not a little changed. Before the war, that conquest was represented to be quite an easy affair. The valiant spirits who meditated it were only fearful lest it should be too easy to be glorious. They had no apprehension, except that resistance would not be so powerful as to render the victory splendid. These confident expectations were, however, accompanied with a commendable spirit of moderation, the true mark of great minds, and it was gravely said, that we ought not to make too large a grasp for dominion, but

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to stop in our march of conquest northward, somewhere about the line of perpetual congelation, and to leave to our enemies or others, the residue of the continent to the pole. How happens, sir, that this country, so easy of acquisition, and over which, according to the prophecies, we were to have been by this time legislating, dividing it into States and Territories, is not yet ours? Nay, sir, how happens it, that we are not even free of invasion ourselves; that gentlemen here call on us, by all the motives of patriotism, to assist in the defence of our own soil, and portray before us the state of the frontier, by frequent and animated allusion to all those topics, which the modes of Indian warfare usually suggest?

This, sir, is not what we were promised. This is not the entertainment to which we were invited. This is no fulfilment of those predictions, which it was deemed obstinacy itself not to believe. This is not that harvest of greatness and glory, the seeds of which were supposed to be sown, with the declaration of war.

When we ask, sir, for the causes of these disappointments, we are told that they are owing to the opposition which the war encounters, in this House, and among the people. All the evils which afflict the country are imputed to opposition. This is the fashionable doctrine, both here and elsewhere. It is said to be owing to opposition that the war became necessary; and owing to opposition also that it has been prosecuted with no better success.

This, sir, is no new strain. It has been sung a thousand times. It is the constant tune of every weak or wicked administration. What minister ever yet acknowledged, that the evils which fell on his country were the necessary consequences of his own incapacity, his own folly, or his own corruption? What possessor of political power ever yet failed to charge the mischiefs resulting from his own measures, upon those who had uniformly opposed those measures? The people of the United States may well remember the administration of Lord North. He lost America to his country. Yet he could find pretences for throwing the odium upon his opponents. He could throw it upon those who had forewarned him of consequences from

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the first, and who had opposed him, at every stage of his disastrous policy, with all the force of truth and reason, and talent. It was not his own weakness, his own ambition, his own love of arbitrary power, which disaffected the colonies. It was not the Tea Act, the Stamp Act, or the Boston Port Bill, that severed the empire of Britain. Oh no! It was owing to no fault of administration. It was the work of opposition. It was the impertinent boldness of Chatham; the idle declaration of Fox; and the unseasonable sarcasm of Barre! These men, and men like them, would not join the Minister in his American war. They would not give the name and character of wisdom to that which they believed to be the extreme of folly. They would not pronounce those measures just and honorable which their principles led them to detest. They declared the Minister's war to be wanton. They foresaw its end, and pointed it out plainly both to the Minister and to the country. He pronounced the opposition to be selfish and factious. He persisted in his course; and the result is in history.

This example of ministerial justice seems to have become a model for these times and this country. With slight shades of difference, owing to different degrees of talent and ability, the imitation is sufficiently exact. It requires little imagination to fancy one's self sometimes to be listening to a recitation of the captivating orations of the occupants of Lord North's Treasury Bench. We are told that our opposition has divided the Government, and divided the country. Remember, sir, the state of the Government and of the country, when the war was declared. Did not differences of opinion then exist? Do we not know that this House was divided? Do we not know that the other House was still more divided? Does not every man, to whom the public documents are accessible, know, that in that other House, one single vote, having been given otherwise than it was, would have rejected the act declaring war, and adopted a different course of measures? A parental, guardian Government would have regarded that state of things. It would have weighed such considerations. It would have inquired coolly and dispassionately into the state of public opinion, in the States of this confederacy. It would have looked especially to

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those States, most concerned in the professed objects of the war, and whose interests were to be most deeply affected by it. Such a Government, knowing that its strength consisted in the union of opinion among the people, would have taken no step, of such importance, without that union; nor would it have mistaken mere party feeling for national sentiment.

That occasion, sir, called for a large and liberal view of things. Not only the degree of union in the sentiments of the people, but the nature and structure of the Government; the general habits and pursuits of the community; the probable consequences of the war immediate and remote on our civil institutions; the effect of a vast military patronage; the variety of important local interests and objects;—those were considerations essentially belonging to the subject. It was not enough that Government could make out its cause of war on paper, and get the better of England in the argument. This was requisite; but not all that was requisite. The question of War or Peace, in a country like this, is not to be compressed into the compass that would befit a small litigation. It is not to be made to turn upon a pin. Incapable in its nature of being decided upon technical rules, it is unfit to be discussed in the manner which usually appertains to the forensic habit. It should be regarded as a great question not only of right, but also of prudence and expediency. Reasons of a general nature, reasons of a moral nature, considerations which go back to the origin of our institutions, and other considerations which look forward to our hopeful progress in future times, all belong, in their just proportions and gradations, to a question in the determination of which the happiness of the present and of future generations may be so much concerned.

I have heard no satisfactory vindication of the war on grounds like those. They appear not to have suited the temper of that time. Utterly astonished at the declaration of war, I have been surprised at nothing since. Unless all history deceived me, I saw how it would be prosecuted, when I saw how it was begun. There is in the nature of things an unchangeable relation between rash counsels and feeble execution.

It was not, sir, the minority that brought on the war. Look

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to your records, from the date of the Embargo, in 1807, to June, 1812. Everything that men could do, they did, to stay your course. When at last they could effect no more, they urged you to delay your measures. They entreated you to give yet a little time for deliberation, and to wait for favorable events. As if inspired for the purpose of arresting your progress, they laid before you the consequences of your measures, just as we have seen them since take place. They predicted to you their effects on public opinion. They told you, that instead of healing they would inflame political dissensions. They pointed out to you also what would and what must happen on the frontier. That which since hath happened there is but their prediction, turned into history. Vain is the hope, then, of escaping just retribution, by imputing to the minority of the Government or to the opposition among the people the disasters of these times. Vain is the attempt to impose thus on the common sense of mankind. The world has had too much experience of ministerial shifts and evasions. It has learned to judge of men by their actions, and of measures by their consequences.

If the purpose be, by casting these imputations upon those who are opposed to the policy of the Government, to check their freedom of inquiry, discussion, and debate, such purpose is also incapable of being executed. That opposition is constitutional and legal. It is also conscientious. It rests in settled and sober conviction, that such policy is destructive to the interests of the people, and dangerous to the being of the Government. The experience of every day confirms these sentiments. Men who act from such motives are not to be discouraged by trifling obstacles, nor awed by any dangers. They know the limit of constitutional opposition; up to that limit, at their own discretion, they will walk, and walk fearlessly. If they should find, in the history of their country, a precedent for going over, I trust they will not follow it. They are not of a school in which insurrection is taught as a virtue. They will not seek promotion through the paths of sedition, nor qualify themselves to serve their country in any of the high departments of its government, by making rebellion the first element in their political science.

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Important as I deem it to discuss, on all proper occasions, the policy of the measures at present pursued, it is still more important to maintain the right of such discussion, in its full and just extent. Sentiments lately sprung up, and now growing fashionable, make it necessary to be explicit on this point. The more I perceive a disposition to check the freedom of inquiry by extravagant and unconstitutional pretences, the firmer shall be the tone in which I shall assert, and the freer the manner in which I shall exercise it. It is the ancient and undoubted prerogative of this people to canvass public measures and the merits of public men. It is a "home-bred right," a fireside privilege. It hath ever been enjoyed in every house, cottage, and cabin in the nation. It is not to be drawn into controversy. It is as undoubted as the right of breathing the air, or walking on the earth. Belonging to private life as a right, it belongs to public life as a duty; and it is the last duty, which those whose representative I am, shall find me to abandon. Aiming at all times to be courteous and temperate in its use, except when the right itself shall be questioned, I shall then carry it to its extent. I shall then place myself on the extreme boundary of my right, and bid defiance to any arm that would move me from my ground. This high constitutional privilege, I shall defend and exercise within this House, and without this House, and in all places; in time of war, in time of peace, and at all times. Living I shall assert it, dying I shall assert it, and should I leave no other inheritance to my children, by the blessing of God, I will still leave them the inheritance of free principles and the example of a manly, independent and constitutional defence of them.

Whoever, sir, would discover the causes which have produced the present state of things, must look for them, not in the efforts of opposition, but in the nature of the war, in which we are engaged, and in the manner in which its professed objects have been attempted to be obtained. Quite too small a portion of public opinion was in favor of the war, to justify it, originally. A much smaller portion is in favor of the mode in which it has been conducted. This is the radical infirmity. Public opinion, strong and united, is not with you, in your

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Canada project. Whether it ought to be or ought not to be, the fact that it is not, should, by this time, be evident to all; and it is the business of practical statesmen, to act upon the state of things as it is, and not to be always attempting to prove what it ought to be. The acquisition of that country is not an object, generally desired by the people. Some gentlemen, indeed, say it is not *their ultimate* object; and that they wish it only as the means of effecting other purposes. But, sir, a large portion of the people believe that a desire for the conquest and final retention of Canada is the mainspring of public measures. Nor is the opinion without ground. It has been distinctly avowed, by public men, in a public manner. And if this be not the object, it is not easy to see the connection between your means and ends. At least, that portion of the people, that is not in the habit of refining far, cannot see it. You are, you say, at war for maritime rights, and free trade. But they see you lock up your commerce and abandon the ocean. They see you invade an interior province of the enemy. They see you involve yourselves in a bloody war with the native savages; and they ask you, if you have, in truth, a maritime controversy with the western Indians, and are really contending for sailors' rights with the tribes of the Prophet? In my judgment, the popular sentiment, in this case, corresponds with the soundest political discretion. In my humble opinion, you are not able to travel in the road you have taken, but if you were, it would not conduct you to your object.

I am aware, sir, that both the professed objects of the war, and the manner of prosecuting it, may receive the nominal approbation of a great majority of those who constitute the prevailing party in the country. But I know also how extremely fallacious any inference from that circumstance would be, in favor of the real popularity of the measure. In times like these, a great measure of a prevalent party becomes incorporated with the party interest. To quarrel with the measure would be to abandon the party. Party considerations, therefore, induce an acquiescence in that, on which the fate of party is supposed to depend. Gentlemen, sir, fall into strange inconsistencies on this subject. They tell us that the war is popular,

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that the invasion of Canada is popular, and that it would have succeeded, before this time, had it not been for the force of opposition. Sir, what gives force to opposition in this country? Certainly nothing but the popularity of the cause of opposition, and the numbers who espouse it. Upon this argument, then, in what an unprecedented condition are the people of these States! We have on our hands a most popular war; we have also a most popular opposition to that war. We cannot push the measure, the opposition is so popular. We cannot retract it, the measure itself is so popular. We can neither go forward, nor backward. We are at the very centre of gravity, — the point of perpetual rest.

The truth is, sir, that party support is not the kind of support necessary to sustain the country through a long, expensive, and bloody contest; and this should have been considered, before the war was declared. The cause, to be successful, must be upheld by other sentiments, and higher motives. It must draw to itself the sober approbation of the great mass of the people. It must enlist, not their temporary or party feelings, but their steady patriotism, and their constant zeal. Unlike the old nations of Europe, there are in this country no dregs of population, fit only to supply the constant waste of war, and out of which an army can be raised, for hire, at any time, and for any purpose. Armies of any magnitude can here be nothing but the people embodied; and if the object be not one for which the people will embody, there can be no armies. It is, I think, too plain to be doubted, that the conquest of Canada is such an object. They do not feel the impulse of adequate motive. Not unmindful of military distinction, they are yet not sanguine of laurels in this contest. The harvest, thus far, they perceive has not been great. The prospect of the future is no greater. Nor are they altogether reconciled to the *principle* of this invasion. Canada, they know, is not to be conquered, but by drenching its soil in the blood of its inhabitants. They have no thirst for that blood. The borderers, on the line, connected by blood and marriage, and all the ties of social life, have no disposition to bear arms against one another. Merciless indeed has been the fate of some of these people. I understand it to

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be fact, that in some of the affairs, which we call battles, because we have had nothing else to give the name to, brother has been in arms against brother. The bosom of the parent has been exposed to the bayonet of his own son. Sir, I honor the people that shrink from a warfare like this. I applaud their sentiments and their feelings. They are such as religion and humanity dictate, and such as none but cannibals would wish to eradicate from the human heart.

You have not succeeded in dividing the people of the provinces from their Government. Your commanders tell you that they are universally hostile to your cause. It is not, therefore, to make war on their Government; it is to make war, fierce, cruel, bloody war, on the people themselves, that you call to your standard the yeomanry of the Northern States. The experience of two campaigns should have taught you, that they will not obey that call. Government has put itself in every posture. It has used supplications and entreaty; it has also menaced, and it still menaces, compulsion. All is in vain. It cannot longer conceal its weakness on this point. Look to the bill before you. Does not that speak a language exceeding everything I have said? You last year gave a bounty of sixteen dollars. You now propose to give a bounty of one hundred and twenty-four dollars, and you say you have no hope of obtaining men at a lower rate. This is sufficient to convince me, it will be sufficient to convince the enemy, and the whole world, yourselves only excepted, what progress your Canada war is making in the affections of the people.

It is to no want of natural resources, or natural strength, in the country, that your failures can be attributed. The Northern States alone are able to overrun Canada in thirty days, armed or unarmed, in any cause which should propel them by inducements sufficiently powerful. Recur, sir, to history. As early as 1745, the New England colonies raised an army of five thousand men, and took Louisbourg from the troops of France. On what point of the enemy's territory, let me ask, have you brought an equal force to bear in the whole course of two campaigns? On another occasion, more than half a century ago, Massachusetts alone, although its population did not exceed

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one-third of its present amount, had an army of twelve thousand men. Of these, seven thousand were at one time employed against Canada. A strong motive was then felt to exist. With equal exertion, that Commonwealth could now furnish an army of forty thousand men.

You have prosecuted this invasion for two campaigns. They have cost you more, upon the average, than the campaigns of the Revolutionary War. The project has already cost the American people nearly half as much as the whole price paid for Independence. The result is before us. Who does not see and feel, that this result disgraces us? Who does not see in what estimation our martial prowess must be by this time holden, by the enemy, and by the world? Administration has made its master effort to subdue a province, three thousand miles removed from the mother country; lying at our own doors; scarcely equal in natural strength to the least of the States of this confederacy, and defended by external aid to a limited extent. It has persisted two campaigns—and it has failed. Let the responsibility rest where it ought. The world will not ascribe the issue to want of spirit or patriotism in the American people. The possession of those qualities, in high and honorable degrees, they have heretofore illustriously evinced, and spread out the proof on the record of their Revolution. They will be still true to their character, in any cause which they feel to be their own. In all causes they will defend themselves. The enemy, as we have seen, can make no permanent stand, in any populous part of the country. Its citizens will drive back his forces to the line. But at that line, at the point where defence ceases, and invasion begins, they stop. They do not pass it because they do not choose to pass it. Offering no serious obstacle to their actual power, it rises, like a Chinese wall, against their sentiments and their feelings.

It is natural, sir, such being my opinions, on the present state of things, that I should be asked what, in my judgment, ought to be done. In the first place, then, I answer, withdraw your invading armies, and follow counsels which the national sentiment will support. In the next place, abandon the system of commercial restriction. That system is equally ruinous to the

interests, and obnoxious to the feelings of whole sections and whole States. They believe you have no constitutional right to establish such systems. They protest to you, that such is not, and never was, their understanding of your powers. They are sincere in this opinion, and it is of infinite moment, that you duly respect that opinion, although you may deem it to be erroneous. These people, sir, resisted Great Britain, because her Minister, under pretence of regulating trade, attempted to put his hand into their pockets, and take their money. There is that, sir, which they then valued, and which they still value, more than money. That pretence of regulating trade they believed to be a mere cover for tyranny and oppression. The present embargo, which does not vex, and harass, and embarrass their commerce, but annihilates it, is also laid by color of a power to regulate trade. For if it be not laid by virtue of this power, it is laid by virtue of no power. It is not wonderful, sir, if this should be viewed by them as a state of things not contemplated when they came into the national compact.

Let me suppose, sir, that when the Convention of one of the commercial States, Massachusetts for example, was deliberating on the adoption of this Constitution, some person, to whose opening vision the future had been disclosed, had appeared among them. He would have seen there the Patriots who rocked the cradle of liberty in America. He would have seen there statesmen and warriors, who had borne no dishonorable parts in the councils of their country, and on her fields of battle. He would have found these men recommending the adoption of this Instrument to a people, full of the feeling of independence, and naturally jealous of all governments but their own. And he would have found that the leading, the principal, and the finally prevalent argument, was the *protection and extension of commerce*.

Now suppose, sir, that this person, having the knowledge of future times, had told them, "This Instrument, to which you now commit your fates, shall for a time not deceive your hopes. Administered and practised, as you now understand it, it shall enable you to carry your favorite pursuits to an unprecedented extent. The increase of your numbers, of your wealth, and of

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your general prosperity shall exceed your expectations. But other times shall arrive. Other counsels shall prevail. In the midst of this extension and growth of commerce and prosperity, an Embargo, severe and universal, shall be laid upon you, for eighteen months. This shall be succeeded by non-importations, restrictions, and embarrassments, of every description. War, with the most powerful maritime nation on earth, shall follow. This war shall be declared professedly for *your* benefit, and the protection of *your* interest. It shall be declared nevertheless *against* your urgent remonstrance. Your voice shall be heard, but it shall be heard only to be disregarded. It shall be a war for sailors' rights, against the sentiments of those to whom eight-tenths of the seamen of the country belong. It shall be a war for maritime rights, forced upon those who are alone interested in such concerns. It shall be brought upon you by those to whom seamen and commerce shall be alike unknown; who shall never have heard the surges of the sea; and into whose minds the idea of a ship shall never have entered, through the eye, till they shall come, from beyond the western hills, to take the protection of your maritime rights, and the guardianship of your commercial interests into their skilful and experienced hands. Bringing the enemy to the blockade of your ports, they shall leave your coasts to be undefended, or defended by yourselves. Mindful of what may yet remain of your commerce, they shall visit you with another Embargo. They shall cut off your intercourse of every description with foreign nations. This not only; they shall cut off your intercourse of every description by water, with your sister States. This not only; they shall cut off your intercourse of every description by water, between the ports of your own States. They shall seize your accustomed commerce, in every limb, nerve, and fibre, and hold it, as in the jaws of death."

I now put it to you, sir, whether, if this practical administration of the Constitution had been laid before them, they would have ratified it. I ask you, if the hand of Hancock himself would not sooner have committed it to the flames. If then, sir, they did not believe, and from the terms of the instrument had no reason to believe, that it conferred such powers on the

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Government, then, I say, the present course of its administration is not consistent with its spirit and meaning.

Let any man examine our history, and he will find that the Constitution of the country owes its existence to the commerce of the country. Let him inquire of those that are old enough to remember, and they will tell it to him. The idea of such a compact, as is well known, was first unfolded in a meeting of delegates from different States holden for the purpose of making some voluntary agreements respecting trade, and establishing a common tariff. I see near me an honorable and venerable gentleman (Mr. Schureman of New Jersey), who bore a part in the deliberations of that assembly, and who put his hand to the first recommendation, ever addressed to the people of these States by any body of men, to form a national Constitution. He will vouch for the truth of my remark. He will tell you the motives which actuated him and his associates, as well as the whole country, at that time. The faith of this nation is pledged to its commerce, formally and solemnly. I call upon you to redeem that pledge; not by sacrificing, while you profess to regard it; but by unshackling it, and protecting it, and fostering it, according to your ability, and the reasonable expectations of those who have committed it to the care of Government. In the commerce of the country, the Constitution had its birth. In the extinction of that commerce, it will find its grave. I use not the tone of intimidation or menace, but I forewarn you of consequences. Let it be remembered, that in my place, this day, and in the discharge of my public duty, I conjure you to alter your course. I urge to you the language of entreaty. I beseech you, by your best hopes of your country's prosperity; by your regard for the preservation of her Government and her Union; by your own ambition, as honorable men, of leading hereafter in the councils of a great and growing empire; I conjure you, by every motive which can be addressed to the mind of man, that you abandon your system of restrictions — that you abandon it at once — and abandon it forever.

The humble aid, which it would be in my power to render to measures of Government, shall be given cheerfully, if Govern-

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ment will pursue measures which I can conscientiously support. Badly as I think of the original grounds of the war, as well as of the manner in which it has been hitherto conducted, if even now failing in an honest and sincere attempt to procure just and honorable peace, it will return to measures of defence and protection, such as reason and common sense and the public opinion all call for, my vote shall not be withholden from the means. Give up your futile projects of invasion. Extinguish the fires that blaze on your inland frontiers. Establish perfect safety and defence there, by adequate force. Let every man that sleeps on your soil sleep in security. Stop the blood that flows from the veins of unarmed yeomanry, and women and children. Give to the living time to bury and lament their dead, in the quietness of private sorrow. Having performed this work of beneficence and mercy on your inland border, turn, and look with the eye of justice and compassion on your vast population along the coast. Unclench the iron grasp of your Embargo. Take measures for that end, before another sun sets upon you. With all the war of the enemy on your commerce, if you would cease to war on it yourselves, you would still have some commerce. That commerce would give you some revenue. Apply that revenue to the augmentation of your navy. That navy, in turn, will protect your commerce. Let it no longer be said, that not one ship of force, built by your hands since the war, yet floats on the ocean. Turn the current of your efforts into the channel which national sentiment has already worn broad and deep to receive it. A naval force, competent to defend your coast against considerable armaments, to convoy your trade, and perhaps raise the blockade of your rivers, is not a chimera. It may be realized. If, then, the war must continue, go to the ocean. If you are seriously contending for maritime rights, go to the theatre where alone those rights can be defended. Thither every indication of your fortunes points you. There the united wishes and exertions of the nation will go with you. Even our party divisions, acrimonious as they are, cease at the water's edge. They are lost in attachment to national character, on the element where that character is made respectable. In protecting naval interests

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by naval means, you will arm yourselves with the whole power of national sentiment, and may command the whole abundance of the national resources. In time you may enable yourselves to redress injuries, in the place where they may be offered, and if need be, to accompany your own flag throughout the world, with the protection of your own cannon.

On the Repeal of the Embargo

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
April 6, 1814.

MR. CHAIRMAN, I am happy to be present at the office now to be performed, and to act a part in the funeral ceremonies of what has usually been called the restrictive system.¹

The occasion, I think, will justify a temperate and moderate exultation on the part of those who have constantly opposed this system of politics, and uniformly foretold its miserable end. I congratulate my friends on this triumph of their principles.

They have not labored altogether in vain. The vote now to be given is a high tribute to the correctness of their opinions and the consistency of their conduct. At the same time, I would not refuse condolence to the few surviving friends to whose affections the deceased was precious; who are overwhelmed with affliction at its sudden dissolution, and who sorrow, most of all, that they shall see its face no more.

The system, sir, which we are now about to explode, is likely to make no inconsiderable figure in our history. It constitutes an era which will be memorable, and I know no gentlemen who may indulge stronger hopes of being remembered by posterity than those whose names have been associated with its introduction and support. It was originally offered to the people of this country as a kind of political faith. It was to be believed, not examined. They were to act upon, not reason about it. To deliberate was to doubt, and to doubt was heretical. It stood upon the trust reposed in its authors,

¹ The Bill to repeal the Embargo Act was reported from the Committee of Foreign Relations, by Mr. Calhoun of South Carolina, April 4, 1814.

not upon any merit which could be discovered in itself. It was to be our political salvation, nobody knew exactly how, and any departure from it would lead to political ruin, nobody could tell exactly why. All that the eye can discern in it appeared to be absurd and preposterous; but there was a supposed hidden character, an efficacy unrevealed to vulgar sight, by which it would answer all the great ends proposed by it, and manifest its superiority over those other political systems which this or any country had at any time adopted. Having assumed the nature of a party superstition, it set all reasoning at defiance, and held the minds of a vast portion of the community in chains difficult to be broken. The more so, because it was attended with a severe and efficacious discipline, by which those who went astray were to be brought to repentance. No Saint in the Calendar ever had a set of followers less at liberty, or less disposed to indulge troublesome inquiry, than some, at least, of those on whom this system depended for support.

But, as in other cases, there were those who were above this superstition, and who directed and controlled it. They had their objects; and if those objects have not been obtained, the reason is correctly assigned in the message before us — “the extensive changes which have recently taken place.” The true character of this system, and of the purposes intended to be effected by it, will hereafter be well understood. The passionate excitement, created by opposition to it, so long as it remained the favorite measure of a predominant party, will cease, now that it is passing off with general consent, and the sense of the community, at liberty at last to exercise itself, will be able to see it in the true light, and will not be restrained from pronouncing decisive sentence of condemnation.

The opponents of these restrictive measures have uniformly contended, not only that they were ruinous to ourselves, and almost wholly inoperative on others, but that they did not spring from a purely American policy. This was the great ground of their opposition. They regarded the restrictive system of the United States as a humble imitation of the continental system of France, and as a measure of co-operation with her Government in its conflict with England.

It was easy, they thought, for those who had not yielded their reason to the dominion of party feeling, to see that such was its true character. I do not intend, on this occasion, to take a view of those historical coincidences between French and American measures which have been so often traced. The commencement of the continental system, after the subjugation of Prussia and the humiliation of Russia, was immediately followed by the American embargo of 1807; and if one were to ask what this Government could have contributed more than it has contributed towards rendering that system effectual, it would be difficult to find an answer. From the nature of things these restrictive measures would have no important effect, but from the concurrence with the measures of other Powers. How were they to affect England? By denying to her a market for her manufactures. This, it was said, would excite discontent among the people, and they would compel their Government to do us justice. How far any such consequence could be hoped for, depended on the portion of her manufactures which found a market in this country. This was not such as to afford rational grounds for such expectation. It is a high estimate to say, that one-twelfth part of the whole product of British manufactures finds a market of consumption in the United States. Could it be supposed, that, by refusing to purchase this amount of her commodities, we could coerce her to comply with our terms? Would the loss of this portion of their market so far incense the people of England that her Government would be compelled, by the force of public opinion, to abandon its measures? How could such an expectation be entertained by those who have not hesitated to deprive the people of this country of the whole market for their exports, and cut off their commerce of every description, and yet imagine that their privations will be borne with patience and resignation? No such expectation was entertained. It was impossible it should be. The truth is now acknowledged. This system depended for its success on another and a mightier system. It was the auxiliary, and not the principal. Not capable, of itself, of producing any great effect on the interest of England,

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it might yet contribute to that end by its co-operation with the measures of her European enemy.

Mr. Calhoun here asked what the gentleman meant by co-operation. In one sense he himself had not used it, and now denied its application.

I do not allude particularly to the speech of the honorable gentleman from South Carolina. I said, that the effect to be expected from the restrictive system of the United States depended on the operation of another system, to which it was appendant. The systems of France and America were intended to operate against the same Power, at the same time, by similar measures, and were, in some degree, mutually dependent on each other for success. This I call co-operation. If France succeeded in her contest with England, then America would succeed. The more she spread desolation and ruin over Europe, the more our hopes of success to our measures were brightened. If France failed, then America would fail also. Our interests were coming to be, in this course of things, identified with those of France. It was the direct and inevitable tendency of this vicious and mischievous system of politics to make a common cause between the two Governments. It was natural that the politicians of this country should wish success to their own measures. This necessarily led them to desire the continuation and increase of the already overgrown power of France; because on this the fate of their own measures depended. Without considering what other causes existed, leading to an undue preference and partiality for that Power, which have so warped and biassed its whole system of foreign relations, it is entirely evident that the restrictive measures of this Government, from first to last, were of a nature to associate its hopes, its wishes, and its supposed interests with the side of France. This is the charge so often urged against the course of administration, and the grounds on which it rests are now no longer to be denied. Their system, as is admitted, was adopted when every Power on the Continent was arrayed against England, and its ports shut to her commerce. The final abandonment of the system

is now justified on the ground that great changes have taken place. These changes are neither more nor less than the overthrow of French power, and the deliverance of nations long oppressed by its bloody and barbarous despotism. How unnatural, how perverse, how radically false must be a system of measures which has opposed our interests to the general interests of mankind, and reduced us to that miserable condition, that unless we would wish to see the measures of our own Government disconcerted and its hopes disappointed, we must rejoice, not in the general liberty and prosperity of nations, but in the progress of successful usurpation! In my opinion, sir, no censure is too severe to bestow on such a system of politics. Even without regard to the character of the Government with which it was uniting us, it was, in its own nature, radically wrong and reprehensible. Its direct tendency was to diminish our own independence, and our self-respect, and to lead to a reliance on the efforts and success of others for the maintenance of our own rights. It was connecting us most dangerously with the affairs of foreign nations, and rendering us liable to change with every fluctuation of power and politics in Europe. If this system had been described by its authors at first introduction, as it is now described, the people of this country would not have endured it. If they had been told that it depended for support in the continuance of French power over the Continent, and that, in the event of any considerable diminution of that power, it would become futile and contemptible, they would have rejected it with scorn. There is, I trust, in the community, a sentiment of national independence which would have repelled a system of politics founded upon a reliance on the arm of another nation; and I am sure there is a sense of honor and humanity which would have been shocked at such an association of American interests with the most profligate, ruthless, and horrible tyranny that has ever been exercised over any portion of the human race.

To be consistent with themselves the friends of the measures now proposed to be repealed would be bound to re-enact them if the affairs of Europe should again change their aspect. If

the armies of the allies should be repulsed and destroyed ; if Prussia should again be overrun, Austria compelled to make her peace, and Russia driven, in rout and ruin, back to her own "frightful climate" a state of things will again exist favorable to our experiments of commercial restrictions. If the Emperor of France should again be able to subdue, or to humble every Power in Europe but one, then will be the time for our hitherto favorite policy again to develop itself, and to aid in the last labor of imperial ambition. I trust that no such state of things is near, and that Heaven, in its wise and merciful ordering of events, will save us from that from which we have seemed hitherto not desirous of saving ourselves. I hope, also, that the immense losses and sufferings which the people of the United States have endured, uselessly endured, under the operations of the restrictive system, will insure a long abhorrence of its memory.

By the sudden abandonment of all this policy thousands will be unavoidably ruined, as other thousands were ruined at its commencement. In a commercial country nothing can be more objectionable than frequent and violent changes. The concerns of private business do not endure such rude shocks, but with extreme inconvenience and great loss. It would seem, however, that there is a class of politicians to whose taste all change is suited ; to whom whatever is unnatural seems wise, and all that is violent appears great. If great and sudden changes do not agree with their taste, they are, at least, necessary to their system. They must naturally happen in every course of politics that consists altogether in shifts, and projects, and expedients. There has been, for some of the last years, no calculating in the policy of the Government. No man has been able to say what principles would govern it any moment beyond the present. What has made it worse is, that the standard by which some of its leading measures now seem to have been governed has never before been acknowledged. It has not been before confessed that they depended on events in Europe. On the contrary, we have been a thousand times told, that they had nothing to do with the quarrels of other nations, and that to refer to any

such criterion was uncharitable and unjust. Who of all the supporters of non-importations and embargoes, ever yet told us frankly and honestly that they would all be abandoned whenever the power of France should be crushed ?

Looking, sir, to the language which has been holden, to the votes which have been given, and to the measures which have been adopted, so recently, who could have imagined that any Government could thus suddenly have abrogated its whole system ? Since the commencement of the session we received the message recommending an universal embargo, and more rigorous provisions for enforcing the non-importation. An embargo law was accordingly passed, annihilating, at one blow, all the trade of the country, foreign and domestic, and containing provisions and penalties without example in the legislation of this or any free country. In pursuance of the same policy, and further to enforce the system, this House has since passed a bill, relative to trials in the Admiralty Courts, which abolishes ancient and settled usages of law, and introduces novel and inconvenient regulations in their stead. We have received, also, from the other House, another bill making still further provisions for a strict and unrelenting execution of these laws. So essential was it deemed to the vital interests of the country to prevent all importation of British goods, that woollen and cotton fabrics, and spirits distilled from cane, were to be excluded altogether, come from what quarter they might ; because, as they were usually the product of the enemy's country, their neutral character might be colorable only, and false.

It was but the other day that an honorable gentleman from Maryland (Mr. Wright), who usually votes with the majority, moved a resolution for repealing the embargo, but failed in obtaining from the House the favor of taking his resolution into consideration. As little success attended a resolution subsequently moved by my honorable friend from North Carolina (Mr. Gaston). After a whole day's discussion, the House rejected a bill granting liberty to Paul Cuffee to cross the Atlantic for the most honorable purposes of charity and humanity, because it would endanger the safety

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of the country by violating the embargo. No safe provision could be devised, no adequate security could be given; even the discretion of the President, so safe to the *people* when the law is to be enforced, was not to be trusted with any relaxation. In addition to these proofs of the temper of the Government, legislative and other addresses have been presented to us, approving the measures of the Administration, and expressing the fullest confidence that it would adhere to its system. Yet, notwithstanding all this, in a moment—in the twinkling of an eye—the whole system is dissolved. The embargo act, the non-importation act, and all the crowd of additions and supplements, together with all their garniture of messages, reports, and resolutions, are tumbling undistinguished into one common grave. But yesterday, this policy had a thousand friends and supporters; to-day, it is fallen and prostrate, and few “so poor as to do it reverence.”

Sir, a Government which cannot administer the affairs of a nation without producing so frequent and such violent alterations in the ordinary occupations and pursuits of private life, has, in my opinion, little claim to the regard of the community.

It has been said that the system of commercial restriction was favorable to domestic manufactures, and that if it did nothing but induce the habit of providing for our own wants by our own means, it would deserve to be esteemed a blessing. Every gentleman may remember how often, and how zealously, this consideration has been urged upon us. Those, nevertheless, who were opposed to it, and who thought they understood its real character and true objects, did not hesitate to predict that the moment any supposed policy of the Government required it, manufactures would be sacrificed with as little reluctance as commerce had been.

The same unsparing and remorseless hand which had prostrated the one, would equally prostrate the other, to meet any new exigency of affairs, to overcome present financial embarrassment, or answer any purpose of temporary expediency. Something is indeed said in the message in relation to the continuance of the double duties “as a more effectual safeguard and encouragement to our growing manufactures.”

Sir, I consider the imposition of double duties as a mere financial measure. Its great object was to raise revenue, not to foster manufactures.

It is a part of the war system of taxation. As the double duties, in their origin, had little or no reference to the encouragement of manufactures, so neither will they have in their continuance. So soon as the want of money abates, the double duties will cease, and this "safeguard to our growing manufactures" be heard of no more.

I do not say the double duties ought to be continued. I think they ought not. But what I particularly object to, is the holding out of delusive expectations to those concerned in manufactures. The proper measure is undoubtedly a new regulation of the tariff of duties, and perhaps an increase on some selected articles. To double the duties on all articles imported, for the purpose of encouraging the domestic manufacture of some, is absurd and preposterous. That sugar, and coffee, and tea, for example, should be subject to this increase of duties, under pretence of encouraging the woollen and cotton manufactures of the Eastern States, is ridiculous. I trust no man engaged in manufactures will be deceived by it.

But whatever Government intends to do on this subject, it ought to be frank and sincere. Its policy ought to be known, and if it has not a total disregard to the interests of the community, it ought to be constant. In respect to manufactures, it is necessary to speak with some precision.

I am not, generally speaking, their enemy. I am their friend, but I am not for rearing them, or any other interest, in hot-beds. I would not legislate precipitately, even in favor of them; above all, I would not profess intentions in relation to them which I did not purpose to execute. I feel no desire to push the capital into extensive manufactures faster than the general progress of our wealth and population propels it.

I am not in haste to see Sheffield and Birmingham in America. Until the population of the country shall be greater, in proportion to its extent, such establishments would be impracticable, if attempted, and if practicable, they would be unwise.

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Whatever manufactures can be conducted in the household, where children may be occupied under parental guardianship and protection, are useful in the highest degree. Many others, cotton and woollens for instance, of which the material constituting the article of chief value, is or may be the produce of our own soil, are likewise worthy of protection and care. But of those products of which the chief ingredient is the labor bestowed, which can be made profitable only by the employment of vast capital, by the minutest division and subdivision of labor, and by the toil of children of both sexes, drawn together in great numbers, and put out of sight of those who have a natural interest in the preservation of their health and morals, one can hardly speak in terms of so decisive approbation. Habits favorable to good morals and free Governments, are not usually most successfully cultivated in populous manufacturing cities. It is one of the consequences of such employments to render the laborer altogether dependent on his employer. This arises from the extent to which the division of labor is carried in great manufacturing establishments. He whose occupation it has been for his whole life to perform only one of the many operations necessary to the production of a single article, is necessarily among the most dependent of human beings. The trite example of the number of persons — sixteen or eighteen — who have all their several labors and operations in the production of a common brass pin, sufficiently illustrates my idea.

One of these laborers, utterly incapable of making and carrying to the market on his own account the smallest entire article, is necessarily at the mercy of the capitalist for the support of himself and family. Any cause which deprives him of that particular occupation for which only he is fit, by habit and education, throws him a burden on society. As such causes must occur often, it is in the neighborhood of such establishments that hands unemployed or ill employed will be found in greatest numbers.

It is in her manufacturing districts that England recruits her armies. It is there, principally, that those are found who have the least hold on society, and where necessities, or where

habits, force them to the camp. I am not anxious to accelerate the approach of the period when the great mass of American labor shall not find its employment in the field; when the young men of the country shall be obliged to shut their eyes upon external nature, upon the heavens and the earth, and immerse themselves in close and unwholesome workshops; when they shall be obliged to shut their ears to the bleatings of their own flocks, upon their own hills, and to the voice of the lark that cheers them at the plough, that they may open them in dust, and smoke, and steam, to the perpetual whirl of spools and spindles, and the grating of rasps and saws. I have made these remarks, sir, not because I perceive any immediate danger of carrying our manufactures to an extensive height, but for the purpose of guarding and limiting my opinions, and of checking, perhaps a little, the high-wrought hopes of some who seem to look to our present infant establishments for "more than their nature or their state can bear."

It is the true policy of government to suffer the different pursuits of society to take their own course, and not to give excessive bounties or encouragements to one over another. This, also, is the true spirit of the Constitution. It has not, in my opinion, conferred on the Government the power of changing the occupations of the people of different States and sections, and of forcing them into other employments. It cannot prohibit commerce any more than agriculture; nor manufactures any more than commerce. It owes protection to all. I rejoice that commerce is once more permitted to exist; that its remnant, as far as this unblessed war will allow, may yet again visit the seas, before it is quite forgotten that we have been a commercial people. I shall rejoice still further, when I see the Government pursue an independent, permanent, and steady system of national politics; when it shall rely for the maintenance of rights and the redress of wrongs on the strength and resources of our own country, and break off all measures which tend, in any degree, to connect us with the fortunes of a foreign Power.

Mr. Calhoun of South Carolina having replied that "the restrictive system and this war have a common policy — to

maintain our rights and compel the enemy to respect our just claims"—and that neither the House nor the Government had co-operated in the views of France, Mr. Webster said, that although the gentleman was very willing to part with this restrictive system, it was very natural that he should feel for it something like the feeling for a departed friend, and should desire to make it appear respectable when near its end. He now rose to correct an impression his former remarks appeared to have made on the gentleman's mind. The great objection which he had before offered to the restrictive system was, that it was a measure which for its success depended on the course of events in foreign nations. He had made no observation as to motives; the occasion did not call for it; but he contended that the system about to be abolished was a system of false policy altogether; in other words, that "the good old-fashioned policy" was that from which we should never have departed. We ought to have asserted our rights by our own strength, and not, even for the purpose of effecting a great object, have resorted to a course of measures which must be inoperative; we ought to rely for the maintenance of our rights and redress of our wrongs on our own power, and not adopt a policy depending on others to make it efficient. Of late our policy had been so wavering, one day voting this system good, another day bad, that our acts and statutes frowned at each other on record in the most positive spirit of contradiction.

The Increase of Direct Taxes

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
October 24, 1814.

MR. WEBSTER said, the proposition was to grant a new land tax, of twice the amount of the last. Before he gave his vote, he wished to be permitted to state the reasons which would govern and decide it. It had often happened that public bodies, or the majorities in public bodies, having the general power of adopting laws and resolutions binding on and controlling the whole, had supposed themselves capable of reducing dissenting members to a situation, in which any course of conduct pursued by them might be liable to unfavorable construction. But cases of this sort, attended with real difficulty, he thought to be rare. At any rate, the present occasion presented no such difficulty.

He did not feel himself under the necessity, either of obstructing the passage of the taxes through the House, or of taking upon himself any portion of the responsibility of laying them. A case might arise, in which it would rest with those who have been in the minority of the House, on leading measures of Government, to say whether the supplies should be granted or withheld. Whenever such a condition of things shall happen, it will bring its own rule of action along with it. At present, no such case exists. It is not put to us who opposed the war in its origin, and have steadily reprobated the manner in which it has been prosecuted, to say now, whether a burdensome system of taxes shall be imposed on the people to replenish the exhausted treasury. That is for those to determine, who have made the taxes necessary. Our votes are not asked for now, any more than they were upon the declaration of hostilities. It was not then left for us to say, whether there should be war. It is not left with us now to say, whether there shall be taxes. Those who took upon themselves the

responsibility of the first, must bear also the responsibility of the last. And it must be presumed that gentlemen are ready and willing to sustain the consequences of their own measures. Whoever has power to grant revenue, has also the power of directing its expenditure; and if the question of supplies or no supplies, should ever come to rest on the decision of those who have heretofore differed in opinion from the course pursued by the Administration, they then will be able to accompany the supplies with such other measures as shall insure the appropriation of the revenue to proper objects, and place its expenditure in competent hands. But if we were now to say, we will vote for the taxes, if the Administration will apply the means which we shall grant it, to proper and sensible objects, and will call to its aid, in this exigency of affairs, the most prominent men in the nation, without regard to political party or connection, we should be told—"Gentlemen, you are very obliging, but we happen to be able to carry through our taxes upon our own strength. We do not choose to submit to such terms and limitations as you propose, and must beg leave, therefore, to dispense both with your conditions and your votes."

If, he said, the taxes depended on his vote; if the Administration could show it had made fair and reasonable offers for peace, which the enemy had refused; if it would now consent to apply its means to the first great object of all governments, the protection of the people, to carry on the war in a manner agreeable to the common sense of the community, and would endeavor to call forth the talents of the nation to aid the cause of the nation, most assuredly he should vote for whatever supplies the occasion called for. He should only be anxious in such a case to grant enough; because he did not represent those who would weigh, very scrupulously, essential national rights and national security against the price necessary for their preservation. But as no such change of system is intimated, and as the system of taxation now proposed does not depend at all for adoption or rejection on his vote, he should hardly give what might be deemed a sanction to the measures of Government, by a general and voluntary support of its present plans of finance. At the same time he did not

see that other gentlemen, equally opposed with himself to the war, and expecting as little as he did any successful issue to it, without a change, might not, nevertheless, deem the present exigency to be one in which they were at liberty, if they so should choose, to vote for revenue, without making themselves in any degree answerable for its probable misapplication. The whole responsibility, he thought, belonged to the other side of the House. They had undertaken both to put the country into a state of war, and to get it well out again. In the former, they had succeeded; how well they will be able to perform the latter, time would show.

If it was said, continued Mr. Webster, that public credit depends on adopting this system of taxes, and that it cannot be refused without refusing the means of restoring public credit, he certainly hoped that gentlemen would adopt that system of finance which suited them best, as well for the restoration of the public credit, as for other purposes of Government. He did not wish to limit their choice. He only disclaimed any share in the responsibility of measures, in the production of which those whose political opinions he respected had no concern. A high public credit was one of the treasures which the country had committed to the hands of the present Administration. How they are to restore it, buried as it now is under a mass of depreciated stocks, unfilled loans, discredited treasury notes, debts unpaid and debts unliquidated, they must determine for themselves, looking to that account to which the country may call them.

It was worth our while to inquire, how it has happened that public credit has received such a tremendous shock. Whose is the fault? When those measures were begun, which have at length brought us where we now are, the public credit of the United States was as high as that of any nation on earth. To whom are imputable the shame and disgrace of its prostration and fall? To what is it owing? Not to any deficiency in the national resources to sustain the credit of the Government. Both the Secretary of the Treasury and the Committee of Ways and Means tell us, and they tell us truly, that the real means of the nation have been abundant. If, then, the Administration received the public credit in a high and honor-

able condition; if the nation has at all times possessed the means of keeping it so, and the Administration has possessed, as it has, a sufficient control of these means; and if after all, the public credit has gone to fearful wreck and ruin, who alone is answerable for such a state of things? or who can refer our present condition to any other cause than an incompetent management of the powers of government? The basis of public credit is confidence in the national resources, in the duration and stability of government, and in the competency and character of those who administer it. It is owing to no distrust of the resources of the nation, nor of the general organization and structure of the Government, that the public credit had sunk so low. The true cause of this was to be sought elsewhere. No system of taxation, merely as such, will prove an adequate remedy, especially at this late hour. Unless the Administration can court back a general confidence, not only in the wealth of the nation, but also in its own ability and the wisdom and fitness of its own measures, public credit has gone far beyond its grasp.

As to a more able or successful prosecution of the war, he professed not to be sanguine in that hope. That the people will defend themselves, with spirit, whenever attacked, admits of no doubt; but as far as the prosecution of the war rests with the Government, he despaired of any change in the manner, or any difference in the result. The Administration appeared to him not to have changed its habits. It continued to go on in its old party path—to revolve round its party centre, and to draw all its heat and its light, its animation and its being, from party sources. The measure of ability with which the war had been conducted, was about equal to the measure of prudence with which it was declared; and the success of the issue, without a change of auspices, would probably be proportionate to both.

He had been struck with a paragraph in Mr. Jefferson's late letter. Speaking of the invasion of this place by the enemy, he says, he took advantage of this nation unarmed and unprepared. For the partial judgment of a friend, this is sufficiently severe. The Government took its own time to go to war. It invited the enemy to the conflict. It is attacked, two years

afterward, in the centre of the nation, on the very threshold of the Capitol, and even there is found unarmed and unprepared.

The Government was indeed unprepared when it went to war. It has been unprepared ever since; and if the contest should not last more than twice as long as the war of the Greeks and the Trojans, it will come to an end before the country, upon the present system of things, will be prepared for its beginning.

A state of mere unpreparedness, however, was not exactly the whole of our case, when war was declared. There was something in it worse than that, even aside from the character of the war itself, and the opinion which one half the nation had of it.

The country had had commerce, the abundant source of its revenue. A barbarous and unrelenting series of acts of self-murder, called restrictions, had put an end to that commerce. It had had a sinking fund, containing the sustaining, redeeming principles of public credit. This was abandoned. It had a useful national banking institution, with solid capital and on sound principles; and which had proved itself, by twenty years' experience, to be capable of offering the most important facilities to the operations of finance. This also was destroyed. Having made these provisions for revenue, for public credit, and financial operations, the Government felt itself in a condition to invite a war.

From such a beginning, what else could be expected than we have seen to happen? While it remained on our part a war of invasion, nothing was done; and now, when in turn we are attacked by the enemy, the defence of the country rests on the people and on the States, almost unassisted by the aid of Government. In what quarter of the country does the Government afford efficient protection to the people? In most assailable places, the States are obliged to call out their militia upon their own responsibility, and the strength of their own resources; and here, at the heart of the nation, a force of five thousand men has routed and dispersed the Government, and scattered the ashes of the Capitol over the soil which claimed its peculiar and exclusive protection. He had said last session, and he repeated it now, that the Govern-

ment had failed in the discharge of its first great duty — the main object of all governments — the protection of the people.

He wished also the House and the country to consider how we stood with all the neutral Powers of Europe in relation to this war. It had been said by his honorable friend from New York (Mr. Oakley), that the ears of the European Courts were shut against us. He believed this to be perfectly true. The Administration itself knew better than any individual that it had not been able to excite the sympathies of a single Power in Europe, in its favor, on the subject of this war. The reason was obvious. The nations of Europe had seen the part this Government had acted. They had seen it come in, in the moment of European extremity and agony, and take part on the side of an always detested and now fallen tyranny. Without discussing the question, of no importance to them, whether the measures of this Government grew out of a previous stipulation, signed and sealed, and interchanged with that of France, or whether in these measures it had acted gratuitously, and only followed the bent of its own inclination, they could not but take notice of the fact that these measures were brought into play precisely at the moment when they were most likely to aid in the overthrow of the Governments, and the subjugation of the nations of Europe. It was difficult, he thought, to restrain one's indignation on this subject. If anything could make one ashamed of his country, it would be that its Government had been capable of acting such a part. How different would our situation be at this time, if the Government could say to England: "We have interfered in none of your European quarrels. We have sought to take no advantage of the pressure of your circumstances. A republic, ourselves, and attached to the principles of political liberty, we have lent neither aid nor countenance to any projects formed against the general liberty or prosperity of Europe. We have held a course strictly and scrupulously impartial; and for proof of the correctness of our conduct in all these respects, we refer to the unbiassed judgment of neutral nations. We appeal to those who have been with you through the struggle which has now terminated, whether they suspect us of having had any leaning or partiality towards your 'common enemy.'"

As to the negotiation and the terms of peace offered by England, Mr. Webster said it would not be supposed that those who opposed the war as unnecessary and ruinous, were on that account to consent to any other than fair and honorable terms of peace. They held the Administration answerable for an honorable peace. The country's honor was unblemished, when they took the guardianship of its concerns, and it would be required at their hands equally unblemished. For one, he said, in no crisis, in no emergency, in no distress of national affairs, would he consent to a peace which should inflict a wound on the true honor or substantial interests of the country. But he did not affect to conceal his opinion; he wished, rather, on all proper occasions, to express it, that there was no chance of coercing England, or even of defending the country successfully, until the power and strength of the nation should be called forth, and guided by different hands. He wished, at the same time, to express his regret, that the American Commissioners had not proposed *their* terms of peace. He wished they had stated explicitly, whether the Government of this country had or had not given up the grounds upon which it originally went to war. If the British Commissioners looked for extravagant terms to be proposed by ours, it was not very unnatural that they should set out with terms as extravagant themselves. It is to be lamented, that having found out what were the terms of England, our Ministers did not propose their own terms, to the end that the world might see the difference. It may be a question fit for casuists, which partakes least of a pacific temper and moderate views, to propose terms of peace, which are deemed inadmissible, as was done by England, or to propose no terms at all, as was done by ourselves. If the American Ministers were instructed to make peace on fair and reasonable terms, it cannot be too much regretted that they did not make those terms known; because, in order to put the enemy completely in the wrong, it is necessary to show, not only that his terms were extravagant, but that ours were not so.

The publication of the documents here is relied on to satisfy the people of this country of the equity and moderation of the views of the Cabinet. If it should answer that purpose, still

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it does not answer the other, of making known its equity and moderation to England. Because, until now, that they are published here, England had no means of knowing the instructions given to our Ministers. She could only know that if you insisted now, on what you demanded when you went to war, your terms, in her estimation, were as inadmissible as hers are in yours.

But will the publication of *parts* of these instructions satisfy the people of this country that the Government has made fair terms of peace? If anything was published, why not the whole? If the part concealed is not material, why conceal it? In cases of this sort, it is obvious, that whatever has been previously done, may be undone by something subsequent. It is not like a series of correspondence between different parties. Unless the Government publishes the whole in this case it may as well publish nothing.

Mr. Webster said he did not underrate the difficulties of the present crisis. He was well aware of all these difficulties. But he would not say, because he did not think, that they were at all insurmountable with a wise and able administration of government. But it did appear to him, that the country had committed itself into the hands of men not likely to make peace, nor competent to conduct the war. This, he thought, our greatest difficulty, and he believed the nation would come to the same opinion.

In the meantime he should not obstruct; he should only hold himself at liberty not to approve, without reason, the course pursued. It could not be said, then, that the Administration was asked to do its duty while the means are refused; means will not be refused so far as they depend on measures here. Its measures will be carried here, and as far as the aid of this House can go, it will have it. But he should not give his vote for the measures proposed, either by way of expressing his approbation of the past, or his expectations for the future. On the past he looked with mixed emotions of indignation and grief; on the future, with fearful forebodings and apprehensions, relieved only by the hope that the immediate adoption of better counsels might lead to better times.

Speech on the Conscription Bill

HOUSE OF REPRESENTATIVES, December 9, 1814.¹

MR. CHAIRMAN: After the best reflection which I have been able to bestow on the subject of the bill before you, I am of opinion that its principles are not warranted by any provision of the Constitution. It appears to me to partake of the nature of those other propositions for military measures which this session, so fertile in inventions, has produced. It is of the same class with the plan of the Secretary of War; with the bill reported to this House by its own Committee for filling the ranks of the regular army, by classifying the free male population of the United States; and with the resolution recently introduced by an honorable gentleman from Pennsylvania (Mr. Ingersoll), and which now lies on your table, carrying the principle of compulsory service in the regular army to its utmost extent.

This bill indeed is less undisguised in its object, and less direct in its means, than some of the measures proposed. It is an attempt to exercise the power of forcing the free men of

¹ A bill for a classification of the militia, and for drafting individuals, including minors, had passed the Senate. It was a modification of a measure proposed by Mr. Monroe, for a compulsory draft of the free male population between the ages of eighteen and forty-five. Mr. Webster's speech was on a motion to indefinitely postpone the bill. Public sentiment was opposed to the measure and it failed. Referring to it in 1831, Mr. Webster said: "I had a hand, with Mr. Eppes and others, in overthrowing Mr. Monroe's Conscription in 1814." Mr. George Ticknor Curtis, in the "Life of Daniel Webster," said the speech was written out by Mr. Webster afterward, but never published, and that the manuscript was not to be found. It was, however, preserved, is now in the New Hampshire Historical Society, and is here printed from the manuscript in Mr. Webster's handwriting.

this country into the ranks of an army, for the general purposes of war, under color of a military service. To this end it commences with a classification which is no way connected with the general organization of the militia, nor, to my apprehension, included within any of the powers which Congress possesses over them. All the authority which this Government has over the militia, until actually called into its service, is to enact laws for their organization and discipline. This power it has exercised. It now possesses the further power of calling into its service any portion of the militia of the States, in the particular exigencies for which the Constitution provides, and of governing them during the continuance of such service. Here its authority ceases. The classification of the whole body of the militia, according to the provisions of this bill, is not a measure which respects either their general organization or their discipline. It is a distinct system, introduced for new purposes, and not connected with any power which the Constitution has conferred on Congress.

But, sir, there is another consideration. The services of the men to be raised under this act are not limited to those cases in which alone this Government is entitled to the aid of the militia of the States. These cases are particularly stated in the Constitution, "to repel invasion, suppress insurrection, or execute the laws." But this bill has no limitation in this respect. The usual mode of legislating on the subject is abandoned. The only section which would have confined the service of the militia, proposed to be raised, within the United States has been stricken out; and if the President should not march them into the Provinces of England at the north, or of Spain at the south, it will not be because he is prohibited by any provision in this act.

This, sir, is a bill for calling out the militia, not according to its existing organization, but by draft from new created classes; — not merely for the purpose of "repelling invasion, suppressing insurrection, or executing the laws," but for the general objects of war — for defending ourselves, or invading others, as may be thought expedient; — not for a sudden emergency, or for a short time, but for long stated periods; for two years, if

the proposition of the Senate should finally prevail; for one year, if the amendment of the House should be adopted. What is this, sir, but raising a standing army out of the militia by draft, and to be recruited by draft, in like manner, as often as occasion may require?

This bill, then, is not different in principle from the other bills, plans, and resolutions which I have mentioned. The present discussion is properly and necessarily common to them all. It is a discussion, sir, of the last importance. That measures of this nature should be debated at all, in the councils of a free government, is cause of dismay. The question is nothing less than whether the most essential rights of personal liberty shall be surrendered, and despotism embraced in its worst form.

I have risen, on this occasion, with anxious and painful emotions, to add my admonition to what has been said by others. Admonition and remonstrance, I am aware, are not acceptable strains. They are duties of unpleasant performance. But they are, in my judgment, the duties which the condition of a falling State imposes. They are duties which sink deep in his conscience, who believes it probable that they may be the last services which he may be able to render to the Government of his country. On the issue of this discussion, I believe the fate of this Government may rest. Its duration is incompatible, in my opinion, with the existence of the measures in contemplation. A crisis has at last arrived, to which the course of things has long tended, and which may be decisive upon the happiness of present and of future generations. If there be anything important in the concerns of men, the considerations which fill the present hour are important. I am anxious, above all things, to stand acquitted before God and my own conscience, and in the public judgment, of all participations in the counsels which have brought us to our present condition and which now threaten the dissolution of the Government. When the present generation of men shall be swept away, and that this Government ever existed shall be matter of history only, I desire that it may be known that you have not proceeded in your course unadmonished and unforewarned. Let it then be known, that there were those who would have stopped you, in

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the career of your measures, and held you back, as by the skirts of your garments, from the precipice over which you are plunging and drawing after you the Government of your country.

I had hoped, sir, at an early period of the session, to find gentlemen in another temper. I trusted that the existing state of things would have impressed on the minds of those who decide national measures, the necessity of some reform in the administration of affairs. If it was not to have been expected that gentlemen would be convinced by argument, it was still not unreasonable to hope that they would listen to the solemn preaching of events. If no previous reasoning could satisfy them, that the favorite plans of Government would fail, they might yet be expected to regard the fact, when it happened, and to yield to the lesson which it taught. Although they had, last year, given no credit to those who predicted the failure of the campaign against Canada, yet they had seen that failure. Although they then treated as idle all doubts of the success of the loan, they had seen the failure of that loan. Although they then held in derision all fears for the public credit, and the national faith, they had yet seen the public credit destroyed, and the national faith violated and disgraced. They had seen much more than was predicted; for no man had foretold that our means of defence would be so far exhausted in foreign invasion, as to leave the place of our own deliberations insecure, and that we should this day be legislating in view of the crumbling monuments of our national disgrace. No one had anticipated that this city would have fallen before a handful of troops, and that British generals and British admirals would have taken their airings along the Pennsylvania Avenue, while the Government was in full flight, just awaked perhaps from one of its profound meditations on the plan of a conscription for the conquest of Canada. These events, sir, with the present state of things, and the threatening aspect of what is future, should have brought us to a pause. They might have reasonably been expected to induce Congress to review its own measures, and to exercise its great duty of inquiry relative to the conduct of others. If this was too high a pitch of virtue for the multitude of party men, it was at least to have been expected from gentle-

men of influence and character, who ought to be supposed to value something higher than mere party attachment, and to act from motives somewhat nobler than a mere regard to party consistency. All that we have yet suffered will be found light and trifling in comparison with what is before us, if the Government shall learn nothing from experience but to despise it, and shall grow more and more desperate in its measures, as it grows more and more desperate in its affairs.

It is time for Congress to examine and decide for itself. It has taken things on trust long enough. It has followed executive recommendation, till there remains no hope of finding safety in that path. What is there, sir, that makes it the duty of this people now to grant new confidence to the administration, and to surrender their most important rights to its discretion? On what merits of its own does it rest this extraordinary claim? When it calls thus loudly for the treasure and the lives of the people, what pledge does it offer that it will not waste all in the same preposterous pursuits which have hitherto engaged it? In the failure of all past promises, do we see any assurance of future performance? Are we to measure out our confidence in proportion to our disgrace and now at last to grant away everything, because all that we have heretofore granted has been wasted or misapplied? What is there in our condition that bespeaks a wise or an able government? What is the evidence that the protection of the country is the object principally regarded? In every quarter that protection has been more or less abandoned to the States. That every town on the coast is not now in possession of the enemy, or in ashes, is owing to the vigilance and exertions of the States themselves, and to no protection granted to them by those on whom the whole duty of their protection rested.

Or shall we look to the acquisition of the professed objects of the war, and there find grounds for approbation and confidence. The professed objects of the war are abandoned in all due form. The contest for sailors' rights is turned into a negotiation about boundaries and military roads, and the highest hope entertained by any man of the issue, is that we may be able to get out of the war without a cession of territory.

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Look, sir, to the finances of the country. What a picture do they exhibit of the wisdom and prudence and foresight of Government. "The revenue of a State," says a profound writer, "is the State." If we are to judge of the condition of the country by the condition of its revenues, what is the result? A wise government sinks deep the fountain of its revenues—not only till it can touch the first springs, and slake the present thirst of the treasury, but till lasting sources are opened, too abundant to be exhausted by demand, too deep to be affected by heats and droughts. What, sir, is our present supply, and what our provision for the future resource? I forbear to speak of the present condition of the treasury; and as to public credit, the last reliance of government, I use the language of government itself only, when I say it does not exist. This is a state of things calling for the soberest counsels, and yet it seems to meet only the wildest speculations. Nothing is talked of but banks, and a circulating paper medium, and exchequer notes, and the thousand other contrivances which ingenuity, vexed and goaded by the direst necessity, can devise, with the vain hope of giving value to mere paper. All these things are not revenue, nor do they produce it. They are the effect of a productive commerce, and a well ordered system of finance, and in their operation may be favorable to both, but are not the cause of either. In other times these facilities existed. Bank paper and government paper circulated because both rested on substantial capital or solid credit. Without these they will not circulate, nor is there a device more shallow or more mischievous, than to pour forth new floods of paper without credit as a remedy for the evils which paper without credit has already created. As was intimated the other day by my honorable friend from North Carolina (Mr. Gaston) this is an attempt to act over again the farce of the Assignats of France. Indeed, sir, our politicians appear to have but one school. They learn everything of modern France; with this variety only, that for examples of revenue they go to the Revolution, when her revenue was in the worst state possible, while their model for military force is sought after in her imperial era, when her military was organized on principles the most arbitrary and abominable.

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Let us examine the nature and extent of the power which is assumed by the various military measures before us. In the present want of men and money, the Secretary of War has proposed to Congress a military conscription. For the conquest of Canada, the people will not enlist; and if they would, the treasury is exhausted, and they could not be paid. Conscription is chosen as the most promising instrument, both of overcoming reluctance to the service, and of subduing the difficulties which arise from the deficiencies of the exchequer. The administration asserts the right to fill the ranks of the regular army by compulsion. It contends that it may now take one out of every twenty-five men, and any part, or the whole of the rest, whenever its occasions require. Persons thus taken by force, and put into an army, may be compelled to serve there during the war, or for life. They may be put on any service, at home or abroad, for defence or for invasion, according to the will and pleasure of the Government. This power does not grow out of any invasion of the country, or even out of a state of war. It belongs to government at all times, in peace as well as in war, and it is to be exercised under all circumstances, according to its mere discretion. This, sir, is the amount of the principle contended for by the Secretary of War.

Is this, sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of our Constitution? No, sir, indeed it is not. The Constitution is libelled, foully libelled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their own treasure and their own blood a Magna Charta to be slaves. Where is it written in the Constitution, in what article or section is it contained, that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it? Under what concealment has this power lain hidden which now for the first time comes forth, with a tremendous and baleful aspect, to trample down and destroy the dearest rights of personal liberty? Who will show me any constitutional injunction which makes it the duty of the American people to

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surrender everything valuable in life, and even life itself, not when the safety of their country and its liberties may demand the sacrifice, but whenever the purposes of an ambitious and mischievous government may require it? Sir, I almost disdain to go to quotations and references to prove that such an abominable doctrine has no foundation in the Constitution of the country. It is enough to know that that instrument was intended as the basis of a free government, and that the power contended for is incompatible with any notion of personal liberty. An attempt to maintain this doctrine upon the provisions of the Constitution is an exercise of perverse ingenuity to extract slavery from the substance of a free government. It is an attempt to show, by proof and argument, that we ourselves are subjects of despotism, and that we have a right to chains and bondage, firmly secured to us and our children by the provisions of our government. It has been the labor of other men, at other times, to mitigate and reform the powers of government by construction; to support the rights of personal security by every species of favorable and benign interpretation, and thus to infuse a free spirit into governments not friendly in their general structure and formation to public liberty.

The supporters of the measures before us act on the opposite principle. It is their task to raise arbitrary powers, by construction, out of a plain written charter of National Liberty. It is their pleasing duty to free us of the delusion, which we have fondly cherished, that we are the subjects of a mild, free, and limited government, and to demonstrate, and to demonstrate by a regular chain of premises and conclusions, that government possesses over us a power more tyrannical, more arbitrary, more dangerous, more allied to blood and murder, more full of every form of mischief, more productive of every sort and degree of misery than has been exercised by any civilized government, with a single exception, in modern times.

The Secretary of War has favored us with an argument on the constitutionality of this power. Those who lament that such doctrines should be supported by the opinion of a high officer of government, may a little abate their regret, when they remember that the same officer, in his last letter of in-

structions to our ministers abroad, maintained the contrary. In that letter he declares, that even the impressment of seamen, for which many more plausible reasons may be given than for the impressment of soldiers, is repugnant to our Constitution. It might therefore be a sufficient answer to his argument, in the present case, to quote against it the sentiments of its own author, and to place the two opinions before the House, in a state of irreconcilable conflict. Further comment on either might then be properly forborne, until he should be pleased to inform us which he retracted, and to which he adhered. But the importance of the subject may justify a further consideration of the arguments.

Congress having, by the Constitution, a power to raise armies, the secretary contends that no restraint is to be imposed on the exercise of this power, except such as is expressly stated in the written letter of the instrument. In other words, that Congress may execute its powers, by any means it chooses, unless such means are particularly prohibited. But the general nature and object of the Constitution impose as rigid a restriction on the means of exercising power as could be done by the most explicit injunctions. It is the first principle applicable to such a case, that no construction shall be admitted which impairs the general nature and character of the instrument. A free constitution of government is to be construed upon free principles, and every branch of its provisions is to receive such an interpretation as is full of its general spirit. No means are to be taken by implication which would strike us absurdly if expressed. And what would have been more absurd than for this Constitution to have said that to secure the great blessings of liberty it gave to government an uncontrolled power of military conscription? Yet such is the absurdity which it is made to exhibit, under the commentary of the Secretary of War.

But it is said that it might happen that an army could not be raised by voluntary enlistment, in which case the power to raise armies would be granted in vain, unless they might be raised by compulsion. If this reasoning could prove anything, it would equally show, that whenever the legitimate power of

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the Constitution should be so badly administered as to cease to answer the great ends intended by them, such new powers may be assumed or usurped, as any existing administration may deem expedient. This is the result of his own reasoning, to which the secretary does not profess to go. But it is a true result. For if it is to be assumed, that all powers were granted, which might by possibility become necessary, and that government itself is the judge of this possible necessity, then the powers of government are precisely what it chooses they should be. Apply the same reasoning to any other power granted to Congress, and test its accuracy by the result. Congress has power to borrow money. How is it to exercise this power? Is it confined to voluntary loans? There is no express limitation to that effect, and, in the language of the secretary, it might happen, indeed it has happened, that persons could not be found willing to lend. Money might be borrowed then in any other mode. In other words, Congress might resort to a *forced* loan. It might take the money of any man by force, and give him in exchange exchequer notes or certificates of stock. Would this be quite constitutional, sir? It is entirely within the reasoning of the secretary, and it is a result of his argument, outraging the rights of individuals in a far less degree than the practical consequences which he himself draws from it. A compulsory loan is not to be compared, in point of enormity, with a compulsory military service.

If the Secretary of War has proved the right of Congress to enact a law enforcing a draft of men out of the militia into the regular army, he will at any time be able to prove, quite as clearly, that Congress has power to create a Dictator. The arguments which have helped him in one case, will equally aid him in the other, the same reason of a supposed or possible state necessity, which is urged now, may be repeated then, with equal pertinency and effect.

Sir, in granting Congress the power to raise armies, the people have granted all the means which are ordinary and usual, and which are consistent with the liberties and security of the people themselves, and they have granted no others.

To talk about the unlimited power of the Government over the means to execute its authority, is to hold a language which is true only in regard to despotism. The tyranny of arbitrary governments consists as much in its means as in its ends ; and it would be a ridiculous and absurd constitution which should be less cautious to guard against abuses in the one case than in the other. All the means and instruments which a free government exercises, as well as the ends and objects which it pursues, are to partake of its own essential character, and to be conformed to its genuine spirit. A free government with arbitrary means to administer it is a contradiction ; a free government without adequate provision for personal security is an absurdity ; a free government, with an uncontrolled power of military conscription, is a solecism, at once the most ridiculous and abominable that ever entered into the head of man.

Sir, I invite the supporters of the measures before you to look to their actual operation. Let the men who have so often pledged their own fortunes and their own lives to the support of this war, look to the wanton sacrifice which they are about to make of their lives and fortunes. They may talk as they will about substitutes, and compensations, and exemptions. It must come to the draft at last. If the Government cannot hire men voluntarily to fight its battles, neither can individuals. If the war should continue, there will be no escape, and every man's fate and every man's life will come to depend on the issue of the military draft. Who shall describe to you the horror which your orders of conscription shall create in the once happy villages of this country ? Who shall describe the distress and anguish which they will spread over those hills and valleys, where men have heretofore been accustomed to labor, and to rest in security and happiness. Anticipate the scene, sir, when the class shall assemble to stand its draft, and to throw the dice for blood. What a group of wives and mothers and sisters, of helpless age and helpless infancy, shall gather round the theatre of this horrible lottery, as if the stroke of death were to fall from heaven before their eyes on a father, a brother, a son, or a husband. And in a majority

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of cases, sir, it will be the stroke of death. Under present prospects of the continuance of the war, not one half of them on whom your conscription shall fall will ever return to tell the tale of their sufferings. They will perish of disease and pestilence, or they will leave their bones to whiten in fields beyond the frontier. Does the lot fall on the father of a family? His children, already orphans, shall see his face no more. When they behold him for the last time, they shall see him lashed and fettered, and dragged away from his own threshold, like a felon and an outlaw. Does it fall on a son, the hope and the staff of aged parents? That hope shall fail them. On that staff they shall lean no longer. They shall not enjoy the happiness of dying before their children. They shall totter to their grave, bereft of their offspring and unwept by any who inherit their blood. Does it fall on a husband? The eyes which watch his parting steps may swim in tears forever. She is a wife no longer. There is no relation so tender or so sacred that by these accursed measures you do not propose to violate it. There is no happiness so perfect that you do not propose to destroy it. Into the paradise of domestic life you enter, not indeed by temptations and sorceries, but by open force and violence.

But this father, or this son, or this husband goes to the camp. With whom do you associate him? With those only who are sober and virtuous and respectable like himself? No, sir. But you propose to find him companions in the worst men of the worst sort. Another bill lies on your table offering a bounty to deserters from your enemy. Whatever is most infamous in his ranks you propose to make your own. You address yourselves to those who will hear you advise them to perjury and treason. All who are ready to set heaven and earth at defiance at the same time, to violate their oaths and run the hazard of capital punishment, and none others, will yield to your solicitations. And these are they whom you are allowing to join your ranks, by holding out to them inducements and bounties with one hand, while with the other you are driving thither the honest and worthy members of your own community, under the lash and scourge of conscrip-

tion. In the line of your army, with the true levelling of despotism, you propose a promiscuous mixture of the worthy and the worthless, the virtuous and the profligate; the husbandman, the merchant, the mechanic of your own country, with the beings whom war selects from the excess of European population, who possess neither interest, feeling, nor character in common with your own people, and who have no other recommendation to your notice than their propensity to crimes.

Nor is it, sir, for the defence of his own house and home, that he who is the subject of military draft is to perform the task allotted to him. You will put him upon a service equally foreign to his interests and abhorrent to his feelings. With his aid you are to push your purposes of conquest. The battles which he is to fight are the battles of invasion, — battles which he detests perhaps and abhors, less from the danger and the death that gather over them, and the blood with which they drench the plain, than from the principles in which they have their origin. Fresh from the peaceful pursuits of life, and yet a soldier but in name, he is to be opposed to veteran troops, hardened under every scene, inured to every privation, and disciplined in every service. If, sir, in this strife he fall — if, while ready to obey every rightful command of government, he is forced from his home against right, not to contend for the defence of his country, but to prosecute a miserable and detestable project of invasion, and in that strife he fall, 'tis murder. It may stalk above the cognizance of human law, but in the sight of Heaven it is murder; and though millions of years may roll away, while his ashes and yours lie mingled together in the earth, the day will yet come when his spirit and the spirits of his children must be met at the bar of omnipotent justice. May God, in his compassion, shield me from any participation in the enormity of this guilt.

I would ask, sir, whether the supporters of these measures have well weighed the difficulties of their undertaking. Have they considered whether it will be found easy to execute laws which bear such marks of despotism on their front, and which

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will be so productive of every sort and degree of misery in their execution ? For one, sir, I hesitate not to say that they cannot be executed. No law professedly passed for the purpose of compelling a service in the regular army, nor any law which, under color of military draft, shall compel men to serve in the army, not for the emergencies mentioned in the Constitution, but for long periods, and for the general objects of war, can be carried into effect. In my opinion it ought not to be carried into effect. The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist ; and their highest obligations bind them to the preservation of their own rights and the liberties of their people. I express these sentiments here, sir, because I shall express them to my constituents. Both they and myself live under a constitution which teaches us that "the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind." * With the same earnestness with which I now exhort you to forbear from these measures, I shall exhort them to exercise their unquestionable right of providing for the security of their own liberties.

In my opinion, sir, the sentiments of the free population of this country are greatly mistaken here. The nation is not yet in a temper to submit to conscription. The people have too fresh and strong a feeling of the blessings of civil liberty to be willing thus to surrender it. You may talk to them as much as you please, of the victory and glory to be obtained in the enemy's provinces ; they will hold those objects in light estimation if the means be a forced military service. You may sing to them the song of Canada Conquest in all its variety, but they will not be charmed out of the remembrance of their substantial interests and true happiness. Similar

* N. H. Bill of Rights.

pretences, they know, are the grave in which the liberties of other nations have been buried, and they will take warning.

Laws, sir, of this nature can create nothing but opposition. If you scatter them abroad, like the fabled serpents' teeth, they will spring up into armed men. A military force cannot be raised in this manner, but by the means of a military force. If administration has found that it cannot form an army without conscription, it will find, if it venture on these experiments, that it cannot enforce conscription without an army. The Government was not constituted for such purposes. Framed in the spirit of liberty, and in the love of peace, it has no powers which render it able to enforce such laws. The attempt, if we rashly make it, will fail; and having already thrown away our peace, we may thereby throw away our government.

Allusions have been made, sir, to the state of things in New England, and, as usual, she has been charged with an intention to dissolve the Union. The charge is unfounded. She is much too wise to entertain such purposes. She has had too much experience, and has too strong a recollection of the blessings which the Union is capable of producing under a just administration of government. It is her greatest fear, that the course at present pursued will destroy it, by destroying every principle, every interest, every sentiment, and every feeling which have hitherto contributed to uphold it. Those who cry out that the Union is in danger are themselves the authors of that danger. They put its existence to hazard by measures of violence, which it is not capable of enduring. They talk of dangerous designs against government, when they are overthrowing the fabric from its foundations. They alone, sir, are friends to the union of the States, who endeavor to maintain the principles of civil liberty in the country, and to preserve the spirit in which the Union was framed.

Speech on the National Bank Bill

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

February 28, 1816.¹

HE regretted the manner in which this debate had been commenced on a detached feature of the bill, and not a question affecting the principle; and expressed his fears that a week or two would be lost in the discussion of this question, to no purpose, inasmuch as it might ultimately end in the rejection of this bill. He proceeded to reply to the arguments of the advocates of the bill. It was a mistaken idea, he said, which he had heard uttered on this subject, that we were about to reform the national currency. No nation had a better currency, he said, than the United States; there was no nation which had guarded its currency with more care; for the framers of the Constitution, and those who enacted the early statutes on this subject, were hard-money men; they had felt, and therefore duly appreciated, the evils of a paper medium; they therefore sedulously guarded the currency of the United States from debasement. The legal currency of the United States was gold and silver coin. This was a subject in regard to which Congress had run into no folly.

What, then, he asked, was the present evil? Having a perfectly sound national currency — and the Government have no power, in fact, to make anything else current but gold and silver — there had grown up in different States a currency of paper issued by banks, setting out with the promise to pay gold and silver, which they had been wholly unable to redeem. The consequence was, that there was a mass of paper afloat, of

¹ A bill to establish a national bank, with a capital of thirty-five millions of dollars.

perhaps fifty millions, which sustained no immediate relation to the legal currency of the country — a paper which will not enable any man to pay money he owes to his neighbor, or his debts to the Government. The banks had issued more money than they could redeem, and the evil was severely felt. Mr. Webster declined occupying the time of the House to prove that there was a depreciation of the paper in circulation; the legal standard of value was gold and silver; the relation of paper to it proved its state, and the rate of its depreciation. Gold and silver currency, he said, was the law of the land at home, and the law of the world abroad; there could, in the present state of the world, be no other currency. In consequence of the immense paper issues having banished specie from circulation, the Government had been obliged, in direct violation of existing statutes, to receive the amount of their taxes in something which was not recognized by law as the money of the country, and which was, in fact, greatly depreciated. This was the evil.

As to the conduct of the banks, Mr. Webster said he would not examine whether the great advances they had made to the Government during the war were right or wrong in them, or whether it was right or wrong in the Government to accept them; but since the peace, he contended, their conduct had been wholly unjustifiable, as also had that of the treasury in relation to them. It had been supposed the banks would have immediately sold out the stocks, with which they had no business, and have fulfilled their engagements; but public expectation had in this respect been disappointed. When this happened, Mr. Webster continued, the Government ought, by the use of the means in its power, to have compelled the banks to return to their specie payments. In his opinion, Mr. Webster said, any remedy now to be applied to this evil, must be applied to the depreciated mass of paper itself; it must be some measure which would give heat and life to this mortified mass of the body politic. The evil was not to be remedied by introducing a new paper circulation; there could be no such thing, he showed by a variety of illustrations, as two media in circulation, the one credited and the other discredited. All bank paper, he

argued, derives its credit solely from its relation to gold and silver; and there was no remedy for the state of depreciation of the paper currency but the resumption of specie payments. If all the property of the United States was pledged for the redemption of these fifty millions of paper, it would not thereby be brought up to par; or, if it did, that would happen which had never yet happened in any other country. An issue of treasury notes, he added, would have no better effect than the establishment of a new bank paper. He illustrated this general position by referring to a period anterior to the time of the reformation of the coin of England, when the existing coin had been much debased by clipping, &c., which had created much alarm. An attempt had been made to correct the currency thus vitiated, by throwing a quantity of sound coin into circulation with the debased; the result was, that the sound coin disappeared, was hoarded up, because more valuable than that of the same nominal value which was in general circulation.

The establishment of a national bank not being in his opinion the proper remedy, he proceeded to examine what is. The solvency of the banks was not questioned. There could be no doubt, he said, if the banks would unite in the object, they might in three weeks resume the payment of specie, and render the adoption of any measure by this House wholly unnecessary. The banks, he said, were making extravagant profits out of the present state of things, which ought to be curtailed. He referred, for illustration of this point, to the state of the Bank of Pennsylvania, as exhibited in the return to the Legislature of that State, which with a capital of \$2,500,000 had done a discount business of \$4,138,000, at the same time that it held \$1,811,000 of United States stock; so that, without taking into account a mass of treasury notes, real estate, &c., that bank was receiving interest on six and a half millions — nearly three times the amount of its capital. This he considered an extraordinary fact. That bank had been pronounced by the Legislature to be in “a flourishing state.” It was so to the stockholders in the bank, he doubted not; but how was it to those who were affected by the depreciation of it — to the man who comes into an office for life, and relinquishes all his pros-

pects and profits for a fixed salary, not to be diminished during his continuance in office ; to the poor pensioner whose wounds received in his country's service are yet bleeding ?

These banks not emanating from Congress, what engine was Congress to use for remedying the existing evil ? Its only legitimate power, he said, was to interdict the paper of such banks as do not pay specie from being received at the custom-house. With a receipt of forty millions a year, Mr. Webster said, if the Government was faithful to itself and to the interests of the people, they could control the evil ; it was their duty to make the effort ; they should have made it long ago, and they ought now to make it. The evil grows every day worse by indulgence. If Congress did not now make a stand, and stop the current whilst it might, would it, when the current grew stronger and stronger, hereafter do it ? If this Congress should adjourn without attempting a remedy, he said, it would desert its duty.

If this bank were calculated to do good at all, Mr. Webster contended, it was only as an agent of the revenue officers of the Government. As a bank establishment for ordinary banking purposes, what would be its operation ? If this were to be a specie bank, it would go into operation at Philadelphia ; would promise but little, but would perform all its promises ; independent of its connection with the Government, it would not be able to get its notes into circulation ; nobody would borrow of it ; it would operate merely as a bank of deposit. All its transactions would be confined to the negotiation of paper for merchants, to enable them to anticipate for a short time so much of their income as was necessary to pay their bonds for duties on importations ; and so far, but no farther, it would have a positive good operation. But, as a measure to supply a remedy for the disorders of our currency, Mr. Webster argued, this bank would be of no efficacy ; because, if he were not mistaken in his views, its bills would have but a very limited circulation.

As to the evil of the present state of things, Mr. Webster admitted it in its fullest extent. If he was not mistaken, there were some millions of paper in the treasury, which were nearly

worthless, and were now wholly useless to the Government, by which an actual loss of considerable amount must certainly be sustained by the treasury. This was an evil which, he said, ought to be met at once, because it would grow greater by indulgence. In the end, the taxes must be paid in the legal money of the country, and the sooner that was brought about the better. Such was the operation of the present state of the circulating medium, he proceeded to show, that the duties laid by the United States were at a rate ten per cent higher in Boston than in Baltimore, and in Baltimore higher than in Washington, &c. If Congress were to pass forty statutes on the subject, he said, they would not make the law more conclusive than it now was, that nothing should be received in payment of duties to the Government but specie; and yet, no regard was paid to the imperative injunctions of the law in this respect. The whole strength of the Government, he was of opinion, ought to be put forth to compel the payment of the duties and taxes to Government in the legal currency of the country.

In regard to the plan of this proposed bank, Mr. Webster said he would consent to no bank which to all intents and purposes was not a specie bank; and in that view he was in favor of the proposed amendment. He expressed some alarm at the stock feature of the bank, which would enable and might induce the existing bank corporations to come forward and take up the whole stock of this national bank.¹ He should be glad to see a bank established, he observed, in the course of his remarks on this point, which would command the solid capital of the country. There were men, he said, of wealth and standing, who would embark their funds in a bank constituted on commercial specie principles, but who would not associate in such an institution with the stockholders in the country, any more

¹ At the foot of the memorandum of 1831, I find the following, in Mr. Webster's handwriting, in reference to the prediction of excessive speculation in the stock of the proposed bank: "The early history of the bank shows that if it was not foresight, it was at least singularly fortunate guessing, which predicted enormous subscriptions to the proposed institution for purposes of speculation, and out of all proportion to the real ability of the subscribers." — George Ticknor Curtis, "Life of Daniel Webster," I. 149.

than a good currency would associate with a bad one. A national bank, he said, ought to be regarded, not as the power to rectify the present state of the currency, but as a means to aid the Government in the exercise of its power in this respect. He concluded his remarks, by saying that the power of the Government must be exercised in some way, and that speedily, or evils would result, the extent of which he would not attempt to describe.

On the fifth of April, in the debate on the National Bank Bill, Mr. Webster, in reply to Mr. Grosvenor of New York, disclaimed any intention to dictate, &c. In regard to the feature of the bill which was the subject of discussion, Mr. Webster said, he considered it a matter of principle, but attributed that opinion to the gentleman from New York no further than he had assumed the charge of a departure from principle to apply to himself. What is the matter of principle in this case? That control and influence over a great banking institution should not be possessed by the Government. The degree of that influence was not material—the principle remaining the same, be the influence more or less extensive. That principle was violated by this bill, which, he went on to say, could not be fairly compared with similar features in small banks in the State governments. But, he added, every bank so constructed in the United States had failed to answer the purposes for which it was instituted, and was at this moment in the daily habitual violation of its engagements. Could it be doubted, Mr. Webster said, that with this capital, and this power over it, the Government could bring any man into terms, and make the banks act as they pleased? Gentlemen had done him honor in quoting his opinions in support of part of the bill; but he asked, if it was fair to quote a part of his opinions as authority, and abuse him for the rest? Mr. Webster expressed the pleasure he had enjoyed in travelling with his friends here. If, in journeying with a friend, on a road pleasant and smooth, through verdant fields, they should arrive at a part rough and disagreeable; if they should encounter gloom, and darkness should overtake him; if then his friend chose to abandon him,

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and seek a road more agreeable, let him not, said he, complain, if I continue on the old one. To complain of him, Mr. Webster said, the gentleman might as well complain of the fifty-nine others with whom he acted. The gentleman reminded him of the anecdote of the eleven obstinate jurors, and related a case, in which one juror informed the judge that there would be no difficulty in making up a verdict, if it were not for the other eleven, who were the most obstinate fellows he ever met with, and that he himself was the only candid and liberal man of the whole twelve. Mr. Webster said he had shaken hands with the gentleman last session on this subject; if they had changed their opinions, they had not made the world the wiser for them. Mr. Webster said, though young, he found that he possessed antiquated notions; and that, to be useful, he ought to have been with generations that had gone by.

Uniform System of Bankruptcy

HOUSE OF REPRESENTATIVES, December 30, 1823.

MR. WEBSTER, from the Committee on the Judiciary who were instructed to inquire into the Expediency of Establishing a uniform system of bankruptcy, reported that it is not expedient to establish such a system.

MR. WEBSTER observed that the committee had thought it proper to make an early communication of their opinion on this important subject, to the House. In this opinion a great majority of the committee concurred; indeed, he believed he was the only member who had the misfortune to differ from that opinion. The whole committee, however, were desirous of giving a fair opportunity to those gentlemen who, like himself, were in favor of the system, to bring the question before the House. Such an opportunity would now be afforded, as any member might move to amend the report by altering it from a negative to an affirmative character. It seemed to him to be proper on several accounts, that the opinion of the House on the general question of the expediency of a bankrupt law should be taken, before a bill should be brought in. In such a bill there must, necessarily, be much of prolixity and detail; and very much discussion might be expected to arise on particular provisions, which would seem to be misplaced, until there should be some room to think that the general measure itself was acceptable to a majority of the House. Until then there was reason to believe that, such a discussion upon details would have no effect but to consume time. If the House should now reverse this report, the committee would cheerfully prepare and bring in a bill. He would take the liberty to suggest, however, that the best way might be to proceed by resolution. In this way, perhaps, not only the general question might be

settled, but if settled in favor of the measure, subsequent resolutions might proceed to settle some of the general outlines of the system; such, for example, as what classes of persons the system should extend to; whether only to traders, technically or legally so called, or to all persons, by proper description, who have, ordinarily, occasion to use extensive credits; and whether it shall be a temporary or permanent system, etc. He made these suggestions only for the consideration of those who, like himself, were in favor of the system. And to that end that they might have an option to proceed by way of resolution, or by motion to amend the present report, he would move that the report lie upon the table.

The report was accordingly laid on the table.

Remarks on Costs in Patent Cases

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 5, 1824.¹

MR. WEBSTER, in reply to Mr. Buchanan, said, that he felt no particular anxiety on the subject of this bill ; but, having charge of the bill, it seemed proper for him to say something in its defence. The House would recollect, he said, that this whole case of patents is taken, by the law, out of the hands of the State courts, the jurisdiction over it being exclusively reserved to the courts of the United States. The power of legislating on this subject is taken from the States by the Constitution of the United States. And, at this time of day, and before this assembly, Mr. Webster said he need not argue that the right of the inventor is a high property ; it is the fruit of his mind — it belongs to him more than any other property — he does not inherit it — he takes it by no man's gift — it peculiarly belongs to him, and he ought to be protected in the enjoyment of it. Precisely as the arts advance, Mr. Webster went on to say, does property of this description become valuable ; where the nicest machinery is in operation, it is there that the improvements of inventors are in the highest estimation — and with regard to those branches of industry which have been most successful in this country, they are more indebted to the ingenuity of inventors — to the power of mind in the improvement of machinery, than to another species of aid which they have

¹ Mr. Webster, from the Committee on the Judiciary, reported a bill with amendment, directed by the instructions of the House, providing for the substitution of one hundred dollars in place of thirty dollars as the minimum of damages awarded by a jury on which costs in patent cases should be allowed. Mr. Buchanan of Pennsylvania opposed the measure, and Mr. Webster spoke in reply.

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received from time to time. It is to encourage these inventions that our patent laws are designed. Is it any answer to this argument in their favor, that impositions are sometimes practised under cover of these laws? Is it not so with everything else? With regard to land, for example — are there not many persons pretending to have titles to land who really have no title? Are there not as many speculations in landed property as in the property of mind? And shall a man not recover his right to land because the world is full of pretensions of right to land where no right exists? Surely not. It was said by an honorable member from the West the other day, that the people in his part of the country did not know that there was such a thing as a patent office in the country, or such a clause in the Constitution as that which relates to patent rights. Mr. Webster said, he did not know that on this account the House should accommodate its legislation precisely to that state of information. The error was not in the Constitution or the patent laws, but in the want of knowledge among the people, and could only be corrected by its diffusion. In restricting the patentee to the recovery of mere judicial damages, Mr. Webster continued, justice was not done to him. He cannot sue for all his right at once, because the violations by which he is deprived of it are numerous. Suppose you were to compel a man, in suing for land, to sue for it acre by acre — he might get his land, indeed, but he would be ruined by the process of recovery. It was because the particular injury in the case of the violation of a patent right was small, and the expense of redressing it great, that the provision of this bill appeared to be expedient. A redress of the actual injury was not sufficient in this class of cases — if the penalty for the violation was not sufficient to act *in terrorem*, it was nothing. Do not all penal statutes, Mr. Webster asked, go on the ground, that damages are not only to be given to indemnify a sufferer in a particular case, but to such an amount as to deter others from doing the like? The argument of the gentleman from Pennsylvania, besides, went too far. If the damages are awarded at five hundred dollars, as the law now stands, costs are allowed; whilst, if the damages be but ten dollars, they are not allowed. What justice was there in

this ? Where an action is brought to recover damages for the use of an invention or improvement in machinery, the common rule is, to settle the amount of damages at the sale price of the article ; and one of the injurious consequences to defendants themselves, from the present state of the law, is that the juries give as much damages as will carry the costs. He could assure the gentleman from Pennsylvania, whatever might be said in other parts of the country, there was no right which an independent jury of the part of the country in which he resided would protect with more certainty or vigilance, than the patent right. In a clear case, where the intention to deprive the inventor of the benefit of his patent was obvious, the jury would, in almost any case, give damages to the full amount of five hundred dollars. This bill, therefore, would, in this respect, be beneficial to the defendants themselves. On the part of patentees, there were so many things to be proved — for instance, that the invention is new, that it is useful, that the specification is accurate, &c. — so much nicety was required, as to throw sufficient obstacles in his way. The right of the patentee, Mr. Webster said, was one which the Constitution of the United States had authorized and enjoined upon Congress to protect ; the party injured has no security or resort elsewhere, but in the courts of the United States ; and if it was reasonable that in such case he should be entitled to recover costs where the damages amount to one hundred dollars, then this bill ought to pass ; if not, it ought not to pass.

On the Resolution Regarding Greece

UNITED STATES HOUSE OF REPRESENTATIVES, January 24, 1824.

MR. WEBSTER said he had not the least desire to trespass again on the indulgence of the Committee; his object was to ask its attention to a short reply to the objections which had been urged against his proposition. The basis of all fair argument, in all assemblies which wish to conduct their minds to a fair and just result, is to form for themselves a clear understanding of the grounds on which the question rests, and of the true nature of the subject in controversy. He held *that* as a right to which every public measure, proposed in any public body, was entitled; and it was the last right which he would be disposed to abandon in this House or elsewhere. He was the more earnest to state these objections, and remark upon them singly, because he felt that (not from design, probably, but from some inattention or misapprehension) a character had been attributed to his resolution, which had no more to do with it than any two things which were the most foreign from each other. If the debates on this occasion had gone forth to the world, separate from the resolution itself, it might have been conceived that he had proposed a subsidy, an alliance, or a direct war, in favor of the Greeks. His intention was, to call the attention of the Committee back to the real question before it. What that question was, he would, by the blessing of God, now set forth to the Committee and to the country.

The honorable member from New York (Mr. Wood) near me, said Mr. Webster, commenced by saying that the resolution, as its advocates explained it, contained a guarantee of liberty to all the nations of the earth. And where does he derive his authority for such declaration? No such guarantee is to be found

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upon the face of the resolution. No one in favor of its adoption has said any such thing. When such an assertion is made, the premises upon which it is founded should be clearly stated. What is there in any word of the resolution that leads to such a charge? If such an inference can, by any means, be drawn from it, let us hear the argument by which it is to be effected; but first to assume such premises, and then to argue from them, is it fair, is it correct? In combatting any proposition, it is a natural effort of debate to exaggerate what is opposed, and to set forth objections in strong terms. He only asked, on the present occasion, that the measure should be treated with common candor, and that gentlemen would not ingraft fictions of their own imagination upon his resolution, then argue as if it contained a declaration of war, and go to work most valorously against the man of straw, which themselves had formed.

Mr. Webster said, if he understood the gentleman from New York correctly, he had advanced three objections to the resolution. In the first place, he had doubts as to its constitutionality; in the second place, he entertained a pretty deep suspicion that the Greeks would not establish a free government: that they would have some little Emperor of their own, some successor to the Byzantine Kings, to reign over them; and next, the gentleman quoted Grotius, to prove, that sending an agent to revolted colonies is an act of open hostility against the mother country. I do not recollect anything else — oh yes! he also attempted to prove by the patent laws, that we owe nothing to the modern Greeks, for Homer, Hesiod, Thucydides, and other great names of ancient times — and I must do the gentleman the justice to say, that he has very fully established that point from the patent law.

My honorable friend from New Hampshire (Mr. Bartlett), who is the last man to whom I would impute anything unfair, said Mr. Webster, has indulged in somewhat loose statements in his opposition. He has spoken of the resolution as the *fulcrum*, by means of which the world is to be moved. He has supposed that it was a flaming sword intended to guard the paradise of Greece against the power of the Ottoman. But,

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sir, who says so? No words like these have fallen from my mouth—nothing to authorize such a supposition is to be found in the resolution. He asks, if it can be supposed that this measure is to work all the wonders which its advocates suggest? Sir, I have not suggested any wonders—I have never presumed that it would perform any miracles. I think it a proper measure, and that it will do some good—but I expect nothing miraculous from it. The honorable member has spoken in the same strain as others, against my proposition. And really, sir, if Cervantes had never lived, there would have been a plentiful lack of topics in this debate. Gentlemen have spoken of running tilts, and of some crusade to be entered into. Really, sir, I have not sufficient perspicacity and penetration, my brain is too dull, to catch all the ten thousand inferences gentlemen choose to draw from my resolution. If there is anything extravagant in the proposition, let it be shown that there is, by fair argument. The honorable gentleman from New Hampshire imputes to me an intention of “running tilts with windmills.” Sir, there is not much in this remark—and yet, there may be something in it too. It is my duty, I know, to encounter whatever opposition may meet me on this subject; and, sir, if I should happen in my course to meet with a *wind—mill*, why, sir, I must take a tilt with it, whether it be large or small, unless, indeed, I should conclude to have a little patience, and to wait a while, till the motion and the noise shall die of themselves, for a slight puff is generally soon over.¹

Sir, the gentleman from Virginia (Mr. Randolph) has said, if this proposition is not aid it is nothing.

I hold, sir, that there is no aid to the Greeks proposed by this resolution, either in a pecuniary, subsidiary, or belligerent point of view; and yet there is something useful in it to their cause. If this is not maintained, I do not, of course, expect that

¹ In a letter to George Ticknor, Hon. William Plumer, a representative to the eighteenth Congress from New Hampshire, said: “In his reply to Bartlett on the Greek question, he gave the happiest specimen of sarcastic wit I ever witnessed in the House; it was received by the House with a burst of applause amounting to positive uproar and disorder. It was, moreover, perfectly good-humored, and gave no offence even to its object.”

John Randolph

From the Painting by Gilbert Stuart, in the possession of
Prof. H. S. G. Tucker, Alexandria, Va.



Portrait of a man, 18th century.

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the resolution will be adopted. Sir, it is something more than nothing. I am as little inclined to deal in nonentities as any man. The proposition cannot be what it has been represented to be, or it is one of the most magnificent and terrific nothings upon earth. It proposes, indeed, nothing against the Turks. I defy gentlemen to point to the word in the resolution that can bear that construction. Nor has anything fallen from me to authorize it. The gentleman has said, that the Greeks are nothing but a set of poor oppressed slaves — intelligent, if you will, intellectual, refined, and in some cases rich — yet nothing but slaves. Sir, if, with their intelligence, if with their numbers, if with their education (such as it is), they were not slaves, they would hold your sympathy much cheaper than they now do. The remarks in opposition tend to make this measure propose what it never did propose, and to make those who support it say what they never have said.

One word to the gentleman from Mississippi. It appears to me, sir, that his argument is not quite consistent. He says that this resolution is too cold an expression against the principles acted upon by the Holy Alliance; and yet he thinks it may bring us into a war with them. Now, sir, both these remarks cannot be well founded.

Mr. Rankin explained.

Mr. Webster said, it was not his intention to misrepresent the gentleman. But, sir, a gentleman from Georgia (Mr. Cuthbert), for whom I entertain great respect, in the remarks he made yesterday, seems, in my apprehension, to have taken for granted what is in dispute; he said, that it is conceded that this subject had originated altogether in feeling. And pray, sir, who conceded this? I say, if not so many as ten persons had uttered a word in favor of the Greeks, and I had entertained the same opinion that I do now entertain, of the principles advanced by the Allies, and their danger to free Governments, I should have deemed it my duty to bring the subject before this House. Even if the people concerned in it had been situated, as the gentleman yesterday put a case, in the Philippine Isles, I should have moved the same resolution, and should have supported it on the same principles.

The general objection which has been urged against it, is, that its scope is dangerous — that it leads to war. But one extreme inference which was yesterday drawn from as extreme a case, sir, made me feel shocked, to trembling, at the consequences of my own measure. The gentleman, after ably and very truly stating the difference of facility in going to war, between a Republic and a Monarchy, was not satisfied with the cry of “*bella, horrida bella*” — but he stated a case, which almost made me wish myself out of the House of Representatives — and which assuredly would make me wish my proposition out of it. He says, we shall be compelled, in consequence of passing this resolution, to send all our public vessels to the Mediterranean — that we shall next get into a quarrel with Great Britain, and that she will send her fleet, and hermetically seal us up in this Mediterranean bottle, and that then there will be cutting and slashing, running and taking, and we shall be thrown back a whole century. I mention this to show the effects of a fervid imagination, in perverting a proposition which means only peace and law.

The honorable gentleman from Virginia, who has spoken this morning, like a skilful and experienced public man, has endeavored to do (what certainly he has a perfect right to do), to refute me out of my own mouth. He has said that Puffendorff is against me; that if it is supererogatory to make declarations and stipulations to do only what it is a plain and acknowledged duty to do, and if it is to be presumed that States will always do their duty, why may not the Greeks presume that, when the proper time arrived, we should do our duty towards them? Undoubtedly. They are bound to presume so. And therefore, at this very time, they will presume that we shall do something. But what shall we do, if not some act very like that which is now proposed to the House?

The gentleman says we shall be bound, upon the principle of this resolution, to undertake to aid the Canadians; but this inference goes on the presumption that he has truly stated that principle. If we were, indeed, about to proclaim ourselves guardians of universal liberty, his inference would be a fair and true one; but, I ask him to draw his inferences from no

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man's commentary, but to let the resolution speak for itself. The gentleman has attributed to me a remark, which I do not recollect to have made, in relation to the Greeks being held by the Turks as their property.

Mr. Randolph rose, and, in explanation, read a passage from Mr. Webster's speech, as reported in the *National Intelligencer*.

MR. WEBSTER said that he had not had time, since the commencement of this discussion, to look over the printed report of his remarks on the subject. He probably might have used the expression attributed to him. If he did, he meant no improper allusion by it. He only meant to convey the idea of their servitude; that it had been the policy of their conquerors never to consider them upon terms of equality; never to adopt them as subjects, but to treat them and their children as ransomed captives; that the Greeks were compelled to pay a ransom, from year to year, as a price for the privilege of living. The gentleman cannot suppose, said Mr. Webster, that I intended to compare them with any property held within the United States; on the contrary, I feel quite sorry to have given occasion to suppose that such an allusion was intended.

It has been objected that the resolution is in effect an injunction, or, at least a stimulus, to the Executive to send a Minister. But the resolution does not say a word of any attempt to hasten the appointment; it leaves that appointment to be made when the President shall consider it proper and expedient; and, as to profitable consequences, I, at least, stand pretty clear. The gentleman from Virginia knows full well, sir, that I can have nothing to do either with the stimulus or with the reward to which he has alluded.

But, sir, I do not wish to take up too much time of the Committee, and will proceed to ask gentlemen to call back their attention to the real question; for no object on earth, in relation to this subject, is so dear to me as to have it fairly understood that at least my own vote may rest on my own resolution and my own principles. As to its ultimate fate, every gentleman will, of course, determine for himself. I shall be satisfied with the result, provided I have an opportunity to

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make myself clearly understood. What, then, is the question? At the commencement of the session, the President, in his Message to Congress, called our attention somewhat particularly to the struggle in which the Greeks were engaged to maintain their freedom. He had taken a similar notice of that people, in his Message, the year before. He now expresses his opinion very strongly on the subject. He remarks that the sympathy of the whole civilized world is excited in their behalf, and he expresses his strong conviction that the dominion of the Turks over them is lost forever. Now, if it were customary to return an answer to the Message, we surely should not refrain from expressing the opinion of the House on this subject. This brings us, then, to the very pith of the question, which after all is, whether it is fit for this House to express any opinion whatever in the matter. No man can meet me, and prove that the Government is not already committed upon it. The President is the executive organ of the Government; he is charged with the foreign relations of the country; he is the organ of the nation, so far as relates to the safety of its concerns abroad. Many things pass the House, in the shape of resolutions, upon which it would not become the Executive to express an opinion; and the real question is, whether this House has the right to have an opinion, and to express it, on this subject? I submit to the gentleman from Virginia whether it is not proper, whether it is not the good old practice, that the popular branch of the Government should, on certain occasions, express opinions on matters which do not come before it as direct subjects of legislation? Is there a single member who can doubt that, if the House had returned an answer to the President's Message, it would have contained something like this language: "We participate in your sympathy in behalf of the Greeks. You will exercise your discretion as to the propriety of sending an agent to that people; and, if it should be thought proper to send one, we shall make the necessary appropriation when the proper time comes."

We now propose to express this same general opinion by resolution. The only difference, in expressing the opinion by resolution, or by direct reply, is this — that resolutions usually

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have reference to some measure which is to follow, whereas, in an address or reply, opinions may be expressed in a more abstract manner. I think, sir, this subject is of sufficient importance to warrant an expression of the opinion of this House. Yet it is not merely, or principally, for the sake of the Greeks that I introduced it. The history of Greece, for the last five years, fully shows the application of the principles acted upon by the Allied Powers. This evidence of those principles seems to render it proper that we should express our concurrence with the Executive in the expression he made of principles directly the reverse. The abandonment of Greece is another proof of the change of national policy instituted by the Allies. They have certainly started a new principle, which they hold to be a part of the law of the civilized world. Now, if we hold so too, let us not say a word on the subject. But if we think the operation of their present policy is hostile to the true principles of liberty, and if we consider the opinion of this House as worthy of regard, let us express that opinion.

The Allies have brought their power to bear directly upon the Greek cause. They tell us, in terms, that they would act in her aid on principles of their own national interest; but that the general principle of suppressing all revolutionary movements overcomes all considerations of private interest, and they therefore abstain from all aid. Here, then, is a practical application of their new principle; and it is because of the application of this principle that I have asked the House to express its opinion upon it; and I doubt not, that, in the Courts of the Allied Powers, opinions will be expressed discountenancing this attempt of the Greeks against the Turkish Government. So that the question seems to resolve itself into a proposition to consider whether we will give currency to the doctrines of the Alliance by our acquiescence in them. This resolution, therefore, cannot be considered as nugatory and idle; it will show our opinion of the operation of those principles upon human happiness. And now I ask, sir, if it is not of some importance, after the President and the Secretary of State have thought proper to express their opinions on the subject, that this House should make a similar expression?

I think the passage of the resolution can have no effect for evil, while it will have much for good. It is said that it will produce war. I ask how? No one pretends that there is any just cause of war contained in it. Even the gentleman from New York, who has read Grotius so recently, has not shown any cause for war. But it is said that, whether there is cause or not, offence will be taken by the Allies; that they have one system, and we another; and that they will express an opinion the reverse of that contained in the resolution. And let them, sir, with all my heart; but is this war, sir? Yet still we hear nothing but war, war — “*Arma virumque cano.*” We must do nothing they dislike, for fear of war. But, sir, if you once let them understand this is to be your rule of proceeding, they will soon tell you of a great many things they do not like; and if you refuse this resolution on that ground, you will have set a precedent from which you cannot consistently escape.

As to the amendment proposed by the gentleman from South Carolina (Mr. Poinsett), I think the Committee will be satisfied that if my proposition has a tendency to excite the anger of the Allied Powers, his amendment is, on that score, much more dangerous. There appears to be some incongruity between the gentleman's argument and his resolution. He has told you that it is the duty of the Legislature to be stern and inflexible, and not to yield to feelings of sympathy; and yet he has proposed a resolution which expresses nothing but sympathy.

Suppose the gentleman from South Carolina were himself a representative of this Government, at the Court of Russia; and, after the adoption of his amendment, he were met by Pozzi Di Borgo, who should say to him, “I perceive by your papers that a string of resolutions have passed in your House of Representatives, expressive of their warm sympathy in the cause of the Greeks, and against the principles of national policy laid down by the Holy Alliance. You seem all to be running Greek mad — why, sir, don't you know that those Greeks are nothing but a pack of rebels to their sovereign, who have been throwing a firebrand into the midst of the Ottoman empire? What, pray, have you to do with them, and what will this lead to?” What would be his answer? Deny the charge

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he could not — there are the very words produced against him. But if my resolution were adopted, his answer would be obvious enough. He would say, “the President had informed us, at the opening of the session of Congress, that a new State was rising up, in the Mediterranean sea — that it had succeeded in throwing off the government of the Turks, and in rendering itself independent. The House of Representatives felt interested to inquire into the subject, and had merely authorized the President to send an agent, for that purpose, when he should think proper, and the House would make the necessary appropriation.” Perhaps, sir, it arises from self love, but I had rather, in such circumstances, undertake to defend my proposition, than that offered by the gentleman from South Carolina.

Does this resolution hasten the exercise of the duties of the President? Will he say that his discretion was hurried and that now he is bound to send an agent? No, sir. We leave the subject where we found it, in respect to the time, the place, the instructions, and the character of the agent to be sent. He may send a private messenger, if he chooses. It has been said, that, if a public agent is sent, he might possibly meet the Turkish sabre; he may go as a private citizen, and afterwards be accredited when proper. He need not be a public agent. The nature of the agency, and everything relating to it, is left to the discretion of the President; and there I wish to leave it.

I must insist upon it, sir, that there is no cause whatever for the anti-pacific character that has been attributed to the resolution; and that it does not, in the least, hasten the exercise of power by the Executive. It comes, then, to this question at last, whether it is proper for the House to entertain, and express, an opinion in relation to the new and dangerous doctrines set up as public law in Europe. I will trouble the Committee no longer. I regret that this case has not fallen into other hands and can only say (and the House will understand to what I allude) that, in the little experience I have had in public life, I have never supposed that my personal influence could affect any man's vote in favor of a cause I advocated, and I certainly have no reason to believe that the support I have given to this proposition will, on this occasion, have the opposite tendency.

Speech on Bill for the Continuation of the Cumberland Road

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 18, 1825.¹

MR. WEBSTER of Massachusetts then rose and said, that, as he was in favor of the bill, he should say a few words in explanation of the reasons which led him to vote for it. As to the question of power in this House to make appropriations for objects of internal improvement, he should at this time say nothing. When that question was so much agitated in 1816, he had made his opinions respecting it openly known; he was, of course, ready to change them whenever he could be brought to doubt the constitutional foundation on which that power rests.

At present the question was a different one, inasmuch as the present bill might be passed without the assumption of any power different from what has been exercised by this House for these twenty years. The bill, it is true, carries the principle of former acts somewhat further, but it does not alter the principle.

On this subject, as on all others, Mr. Webster said, he wished to bring to the discussion a right feeling — that is, a feeling truly national. It mattered nothing to him who was to be immediately benefited. *Tros Tyriusque*, whether an inhabitant of the banks of the Merrimac of New Hampshire, or the Merrimac of the Missouri, he cared not; provided he be a subject of our legislation, he has claims, said Mr. Webster, on

¹ The bill provided that this Western national road, commencing at Baltimore and completed as far as Wheeling, should be continued to Zanesville, Ohio.

my impartial consideration. If he had been led, since the discussion of 1816, to alter his opinion on any part of the general subject then debated, it was that which respects an equal distribution of the public expenditures through the different parts of the Union, according to their population. He doubted, extremely, the propriety, and even the power of Congress to carry on legislation on the principle of balancing the local interests of different sections of the country. If the business of legislation has been committed to us at all, the whole subject is in our power and under our discretion. He doubted whether Congress had power to adopt a system which should go on the professed principle of distributing the public moneys *pro rata*; having respect to the different portions of the Union merely in a numerical view of them. When Congress legislates at all, it must legislate for a whole, and not for twenty-four parts. The idea had been brought forward, as being calculated to prevent a merely local legislation; but it was, in truth, itself a local idea. Such a system would rest on a foundation essentially vicious. When going into a system of improvement, the House has simply to inquire, where is improvement most wanted? He cared not whether it was beyond the Alleghanies, or beyond the Missouri; wherever it was most needed, there it must first be made. He supposed the House had power to decide which of the various objects was most pressing; but he denied that it had the power to enter into the consideration of a principle of mere numerical calculation, in undertakings for the public good. On the present subject, it was his opinion that the States which had been admitted under the stipulations which had been stated, had, in fairness, a right to expect the Government to proceed with this road.

Taking the different statutes together, it seemed to be holden out that Government would make a road leading to those States. Congress had acted again and again on this idea; and he asked, where was the difference between the present appropriation and those which had been formerly granted for this same road? All that can be said is, that the Government has made advances on a fund which is incompetent to repay them, and so the present amounts to a direct grant. Well; had not this been

done before? The appropriations for the Cumberland road had, many of them, been made when it was known that that fund was inadequate. The case is no worse now. The degree only is different. The principle is the same; and he thought that the Western States might fairly expect this object to be effected on the ground of their several contracts. The next question was, is this a fit object for which to appropriate? Gentlemen say it is not a national object. But he knew of no work equally beneficial to all the twenty-four States. What, asked Mr. Webster, is a national object? Is nothing to be so denominated except what benefits every part of the United States? Congress last year voted a sum to improve certain harbors on Lake Erie; was this of any benefit to Alabama or New Orleans? They had appropriated money for the repairs of Plymouth beach; could this be any benefit to the citizens of Indiana? Works surely may be denominated national which are of extensive importance, although the benefit may not be strictly universal. The fortifications, for instance, which had been erected on the Chesapeake are national only because many have an interest in them. The degree of interest in these works between those who lived on the shores of the Chesapeake and the shores of Lake Michigan was so widely different that the latter may, in comparison, be said to have no interest in them. Yet certainly those fortifications were a fit subject of appropriation, and it was the duty of Congress to erect them.

With respect to the present road, he asked, how did the concern of the General Government in it begin? He presumed the origin of that concern was to be found in the connection of Government with its great territory of public lands. This was the idea out of which grew the reservation of the two per cent fund. It was intended, doubtless, as an inducement to the settlement of the public lands; and none, surely, can doubt that Government may rightfully hold out considerations calculated to bring the public lands to a better market. The reason for making the road is still the same. Those lands are still in market, and every rod which is added to this road increases the value and is calculated to raise the price of those lands.

Another consideration was, the great accommodation which such a line of road would furnish to all the Western States. With respect to those States, the object was strictly a general one. Let me ask, said Mr. Webster, if Government were about to erect a fort or an arsenal, or to build ships of war, and it was possible that any of these objects would require so small a sum as that now asked for, whether anybody would then hesitate? If, then, the object was legitimate, if it was useful to all our citizens, and especially so to those who now ask it, might not Congress lawfully make it? As to the incidental advantages accruing from the expenditure of so much of the public money as was now proposed to be appropriated, he was confident they had been overrated. The expenditure of one hundred and fifty thousand dollars could be no great boon to any of the States. For his own part, he felt glad that this money was to be laid out beyond the mountains. He did not hesitate to avow that he should be yet more glad, could more of the public money be expended there. Such were his feelings, whether right or wrong; and such his views, whether correct or erroneous.

And here he would state what he conceived to be the true situation of that part of the Union. The people he considered as being substantially rich; yet, having no markets, they were without the means of converting their riches to many desirable purposes of common life. And, in such a situation, the expenditure of comparatively a small sum of money might do much in promoting the comfort of the people. There could be no doubt, if gentlemen looked at the money received into the Treasury from the sale of the public lands to the West, and then looked to the whole amount expended by Government, even including the whole of what was laid out for the army, the latter must be allowed to be very inconsiderable, and there must be a constant drain of money from the West, to pay for the public lands. It might, indeed, be said that this was no more than the reflux of capital which had previously gone over the mountains. Be it so. Still, its practical effect was to produce inconvenience, if not distress, by absorbing the money of the people. It was as true of the West as of all other parts

of the country, that the consumer pays the tax. The public revenue was not raised in Boston, or New York, or Charleston. The West paid as much of that revenue as the East, in proportion to its consumption ; nay, on a strict calculation, something more. They pay the tax, and a profit on transportation. True, indeed, the money was collected in the custom-house, yet it was first paid where the imported articles were consumed. It could not be paid in the seaports, if it had not first been received in the interior. Some gentlemen said we must wait till a system is formed — that is, some system of internal improvement so equal in its bearings and so satisfactory in its details that all shall agree in adopting it. He feared, if gentlemen waited till then, they would have to wait till they grew very old. He suspected that few of those who heard him would travel over the roads or sail upon the canals constructed after the adoption of the system. How long would it take merely to make the surveys for such a system ? Was any man to be found bold enough to undertake to sketch out a system of internal improvements extending for twenty years to come ? He would venture to say that no one man could form a plan in which he could get five others to agree. The thing was impracticable — and impracticable for this reason : that our entire condition was merely in a process of development. The country was changing every day and every hour ; new views were continually presenting themselves ; new wants were continually discovered ; new resources were constantly unfolding themselves ; new connections were every day taking place ; individuals were doing much ; States were doing much ; and he was satisfied that, if Congress was never to act on individual cases, but only on a universal system, it would never act at all.

This road was wanted ; it was wanted now ; it was wanted more now than it would be to-morrow ; and the expense of making it to-day would be no more than of making it to-morrow. In the settlement of a new country, roads were all-important. The sooner they were opened, the greater was their value and importance to the settlers. Ought not the road, then, if it is to be made at all, to be made now ?

As to the burden of this appropriation, he agreed, indeed, with the gentleman from South Carolina, that it was proper to limit the public expenditure within reasonable bounds, and to keep down the public debt. Yet he must be permitted to ask, what was likely to be the prodigious effect of this one hundred and fifty thousand dollars upon the public debt? If this was a question which might not be asked now, how could it be asked when the system had been adopted, and an expenditure, not of one hundred and fifty thousand dollars, but fifty millions of dollars, would be called for to carry it into effect? That, indeed, would be a formidable subject of consideration (and one which he suspected would always operate to prevent the adoption of such a system); but now the amount was certainly too small to be in the least degree onerous to the public resources. In illustration of the principle that a general system was slow in being adopted, and that it would be necessary to commence with some particular object, Mr. Webster referred to the act of last session, for removing obstructions in the Mississippi and Ohio rivers. It was then thought extraordinary, by many gentlemen, that an object in which nine different States were each greatly interested should have remained so long unaccomplished. But that circumstance was, perhaps, the most operative reason why it had not been done. Among so many States, it was difficult to obtain mutual counsel and united effort; and they thus continued to neglect an improvement, the want of which had occasioned, at different times, the loss of half a million of dollars, although it was found that responsible individuals were now ready to undertake it for sixty-five thousand dollars; a sum which, at least in the Eastern States, would not be viewed as a heavy burden for one single county, or even for a single town. He regarded the country as under a general expectation of aid from the General Government in respect to the subject of roads. Congress had virtually said to the people of the West, that the road should be carried on till it reached them all; and though it might not have said this in any formal act, yet it had virtually been given out in the speeches made on this floor. The people consider it as under pledge; and the present bill, in carrying on the road for eighty miles, does but

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carry Congress eighty miles further towards the redeeming of its pledge.

Government, he believed, had received eighteen or twenty millions of dollars from the public lands, and it was with the greatest satisfaction he adverted to the change which had been introduced in the mode of paying for them; yet he could never think that the national domain was to be regarded as any great source of revenue. The great object of the Government, in respect to those lands, was not so much the money derived from their sale as it was the getting of them settled. What he meant to say was, that he did not think they ought to hug that domain as a great treasure, which was to enrich the exchequer; yet the consideration that Government has already received large sums from it had great weight with them, when the persons who proposed it came to this House, and asked a small appropriation to aid them in doing so.

Mr. McDuffie of South Carolina having made some remarks in opposition to the bill, Mr. Webster observed in reply, that the gentleman from South Carolina had mistaken him if he supposed that it was his wish so to hasten the sales of the public lands as to throw them into the hands of purchasers who would sell again. His idea only went as far as this: that the price should be fixed as low as not to prevent the settlement of the lands, yet not so low as to tempt speculators to purchase. Mr. Webster observed that he could not at all concur with the gentleman from South Carolina, in wishing to restrain the laboring classes of population in the Eastern States from going to any part of our territory where they could better their condition; nor did he suppose that such an idea was anywhere entertained. The observations of the gentleman had opened to him new views of policy on this subject, and he thought he now could perceive why some of our States continued to have such bad roads; it must be for the purpose of preventing people from going out of them. The gentleman from South Carolina supposes that if our population had been confined to the old thirteen States, the aggregate wealth of the country would have been greater than it now is. But, sir, it is an

error, that the increase of the aggregate of the national wealth is the object chiefly to be pursued by Government. The distribution of the national wealth is an object quite as important as its increase. He was not surprised that the old States not increasing in population so fast as was expected (for he believed nothing like a decrease was pretended) should be an idea by no means agreeable to gentlemen from those States; we are all reluctant in submitting to the loss of relative importance; but this was nothing more than the natural condition of a country densely populated in one part, and possessing in another a vast tract of unsettled lands. The plan of the gentleman went to reverse the order of nature, vainly expecting to retain men within a small and comparatively unproductive territory, "who have all the world before them, where to choose." For his own part, he was in favor of letting population take its own course; he should experience no feeling of mortification if any of his constituents liked better to settle on the Kansas, or the Arkansas, or the Lord knows where, within our territory; let them go and be happier if they could. The gentleman says our aggregate of wealth would have been greater if our population had been restrained within the limits of the old States; but does he not consider population to be wealth? And has not this been increased by the settlement of a new and fertile country? Such a country presents the most alluring of all prospects to a young and laboring man; it gives him a freehold; it offers to him weight and respectability in society; and, above all, it presents to him a prospect of a permanent provision for his children. Sir, these are inducements which never were resisted, and never will be; and, were the whole extent of country filled with population up to the Rocky Mountains, these inducements would carry that population forward to the shores of the Pacific Ocean. Sir, it is in vain to talk; individuals will seek their own good, and not any artificial aggregate of the national wealth; a young, enterprising, and hardy agriculturist can conceive of nothing better to him than plenty of good, cheap land.

I may have misunderstood what the gentleman from South Carolina first said, in relation to the collection and disbursement

of the revenue. I now understand his remarks as only applying to the disturbance in the currency of any portion of the country where large amounts of the revenue are collected, without being again expended. It is true that those who make an immediate advance of the revenue to Government must suffer if it does not return into their hands by means of sale and consumption ; but I believe that the credit usually allowed by Government to importing merchants is about equal to that allowed by them to the purchasers of goods.

The Punishment of Crimes against the United States

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 24, 1825.

MR. WEBSTER rose and said that he might as well take the present opportunity as any other briefly to state what were his views in relation to the penal parts of the bill. He regretted, as much as any of the gentlemen could do, the necessity of capital punishments, and he did not know that he was not prepared to say that a system might be formed in which they should be dispensed with altogether. But such was not the present system of our laws. We punish the crimes of treason, murder, and rape, with death ; and, so long as this punishment was retained at all, he conceived that the crime of arson merited it as richly as either of the other offences. He would state, in a few words, his reasons for this opinion. No human code, proceeding on just principle, could undertake to administer any part of that moral retribution which belonged to the general government of the universe. The great object of human punishments is to deter, by example, from the commission of crimes. Laws do not or ought not to proceed on a vindictive principle. Offenders are punished, not to take vengeance of them, but that others may not offend in like manner. *Nemo prudens punit quia peccatum est, sed ne peccatur.* Such was the sentiment of *Seneca*, and it was a just sentiment. The true inquiry, therefore, is, what degree of punishment is likely to the purpose of prevention, and to secure the safety of lives and property ? It is essential to consider, therefore, in every case, not only whether the crime be highly injurious and dangerous to community, but also whether it be of easy or of diffi-

cult perpetration ; whether it be usually open, or secret ; and if secret, whether detection be generally easy or difficult. Now, with respect to arson, or the malicious burning of dwelling-houses, none could doubt, in the first place, its enormity, and the danger of destruction which it brought on life and property. To him it appeared certainly not less atrocious than ordinary murder. It was generally an act of deliberation, and it endangered, not one life only, but many lives. In the next place, it was easy to be committed — it did not require much preparation, or the favor of particular or unusual circumstances, or the aid of numbers. Lastly, it was of difficult detection. It is usually perpetrated in darkness, and the offender may have gone far from the deposited sparks before they show themselves in general conflagration. Experience proves that extensive fires often happen in cities, under circumstances clearly evincing the agency of incendiaries, where there has been no conviction and no detection. The hope of escape, therefore, in such cases, is great ; and in minds so depraved as to be willing to commit the deed it must evidently be controlled and counterbalanced by the terror of some dreadful punishment, if detection should follow. Still, however, if the House, on due deliberation, should think that the public safety could be sufficiently secured, he should sincerely rejoice. But, for himself, he had not been able to bring his mind to that conclusion.

Remarks on the Necessity of a National Bankrupt Law

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
March 3, 1825.

MR. WEBSTER said that, as the attention of the House seemed not occupied for the moment, he would take the opportunity of making a remark on a subject in relation to which he had, at the last session, created some expectation in the House, and perhaps in the country; he meant the question of a general bankrupt law. His relation to the House, as a member of the Committee on the Judiciary, had occasioned sundry resolutions upon that subject, and divers petitions, to be brought to his attention. It would be remembered that a majority of the committee at the last session had reported against the expediency of a general system of bankruptcy. Differing from the committee in that opinion, he had signified an intention of obtaining, if he might, an expression of the opinion of the House upon it, so soon as a matter intimately connected with the question, then pending, and still pending, before the Supreme Court, should be decided. It was well known that the State insolvent laws, so far as they applied to contracts entered into before the enactment of those laws, had been declared inoperative upon those contracts. The more general question remained to be decided; namely, whether such laws can constitutionally impair the validity of any contracts, whether precedent or subsequent. When he called the attention of the House to this subject at the close of the last session, it was expected that an earlier day would be fixed for the assembling of the court this year; and that, in consequence of such arrangement, the

decision of this question might be had in season for the House to act on the subject, with a full knowledge of what the exigency required, at the present session. That arrangement, however, was not carried into effect. The bill to execute it passed this House, but did not get through the Senate, and up to this moment he had not learned that that tribunal had pronounced its judgment in the case. He thought that decision would naturally be thought important to enlighten useful and practical legislation; although, for one, he was not of opinion that its decision, either way, would remove the necessity of establishing a general system. He remained fully of opinion that, in a country so commercial, with so many States, having almost every degree and every kind of connection and intercourse among their citizens, true policy and just views of public utility required that so important a branch of commercial regulation as bankruptcy ought to be uniform throughout all the States; and, of course, that it ought to be established under the authority of this Government. For his part, entertaining this opinion, he should be disposed to give an earnest attention to the measure, and devote any portion of time and labor to its preparation, whenever it should appear to be the sentiment of the House that it ought to be adopted.

Remarks on the Breakwater in the Delaware

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
February 13, 1826.¹

MR. WEBSTER said that he desired not to be understood as feeling or expressing any hostility to the erection of a Breakwater in Delaware Bay. As far as he knew, it was a measure which deserved great consideration, and if it should be found practicable, within reasonable bounds of expense, he thought it might be proper that it should be erected. But he should certainly vote against this resolution. What is the resolution? asked Mr. Webster. It proposes that the President shall show us (what, with a little industry, we might get for ourselves from the documents on our files) the revenues and the expenditures in certain districts of the United States. If the object of the gentleman is to obtain a mere statistical table, it should be made general. But what I protest against, and what I mean to oppose, is requiring evidence of the amount of revenue which has been paid in any particular port, and then endeavoring to show, by an application of the rule of three, the proportion to which that place is entitled of expenditure for works of convenience or of protection. The principle is unsound in politics — and unsound in political economy. Although the moneys may be collected in that particular spot, the revenue

¹ In the debate on the resolution of Mr. Miner of Pennsylvania, calling for a statement from the President of the net amount of revenue received by the treasury from the ports within Delaware Bay from January 1, 1790, to December 31, 1825, and the amount of expenditures for forts, lighthouses, &c., within that Bay during the same time; also a statement of receipts and expenditures within Chesapeake Bay, and the harbors of New York and Boston.

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is not paid there. It is paid by the consumers of the goods, wherever they may happen to reside. Can it be necessary to go back for thirty-four years, and bring a statistical statement of the revenues collected, and the expenditures made, within the District of the Delaware, in order to convince this House that Philadelphia is an important seaport—that the amount of her shipping is great—that her commerce is valuable—and that, if she needs a defence for her river, it should be given her? Surely not. The amount of revenue received there is laid before us every year. The regular annual statements give us all the information we need, unless, indeed, it is meant to push an argument of State against State. Sir, I wish to bar all such reasoning. I protest against legislating on any such principle. But, if the House thinks differently, and means to proceed on that ground, then let us have the whole; let us see how much revenue has been collected at other ports—at all the ports in the Union—and let us appropriate for each according to the revenue collected. With me, it is no argument at all, for granting a certain sum to be expended at the mouth of the Delaware, that more revenue is collected there than elsewhere. The river may be defended by nature. An appropriation may not have been called for, or its defence may not be practicable. Certainly, if such a calculation is to be gone into, I have no reason to avoid it, from any apprehension that it will prove unfavorable to my constituents: for the fact is directly the reverse. But I do not wish, in order to determine whether this Breakwater should be erected, to go back for thirty years, and ask for the whole history of the Government receipts and expenditures—I might almost say for a short abstract of the administration of the Government during that period. The question comes to this: If the information sought for will enlighten this House in determining whether a Breakwater is needed, or whether it is practicable, at the mouth of the Delaware, then let us get it. But, if such a work be wanted, the fact must be shown on other grounds than those now asked for. If it is commenced at all, it must be commenced only as a national work—on great national considerations.

On the President's Message Relative to the Creek Indians

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
February 5, 1827.¹

MR. WEBSTER said, on rising, that he was not much concerned what course this communication should take, or whether it should be referred to one committee or another ; but he was not contented that it should be supposed, either here or else-

¹ In the year 1825 a treaty had been made at Indian Springs between the United States and the Creek Indians, by which certain lands within the limits of Georgia were ceded to the United States, and by agreement between Georgia and the United States these lands were to become the property of the State of Georgia. The Creek Indians, however, having complained, before the treaty took effect, that it had been negotiated without authority, a new treaty was concluded on the 22d of April, 1826, annulling the treaty of Indian Springs and guaranteeing to the Creek Indians the protection of the United States in all their lands. The State of Georgia claimed certain lands under the first treaty, and threatened to support its surveyor by military force. John Quincy Adams, President of the United States, then sent a message to Congress upon the subject, on the 5th of February, 1827, in which he stated that "if the legislative and executive authorities of the State of Georgia persevere in acts of encroachment upon the territories secured by a solemn treaty to the Indians, and the laws of the Union remain unaltered, a superadded obligation, even higher than that of human authority, will compel the Executive of the United States to enforce the laws, and fulfil the duties of the Nation, by all the force committed for that purpose to his charge."

Mr. Forsyth of Georgia moved a reference of the message to the Committee of the Whole House on the State of the Union, and denied that the Governor of Georgia was guilty of transcending the authority vested in him by law, but had acted under the sovereignty of his State, and had exercised only that discretionary power which was vested in him by her laws. Mr. Webster spoke in reply, and later in the debate moved that the message be referred to a select committee, his motion being carried without a division of the House.

where, that there existed an entire unanimity of opinion with the gentleman from Georgia on this subject. The gentleman from Georgia must know that there were two sides to this question between Georgia and the United States; and he would tell the gentleman from Georgia that there existed two opinions also, not only on that question, but on the conduct which that gentleman had designated as "base and infamous."

This, Mr. Webster said, was strong language, but it was not argument. The gentleman had told the House that nothing had prevented everything going right in Georgia but the interference of the General Government. The gentleman denounced such interference, saying, in effect, "Hands off for the present: leave the Indians to the remedy of the courts." But, Mr. Webster said, he would tell that gentleman, that if there were rights of the Indians, which the United States were bound to protect, that there were those in the House and in the country who would take their part. If we have bound ourselves by any treaty to do certain things, we must fulfil such obligation. High words will not terrify us—loud declamation will not deter us from the discharge of that duty. For myself, said Mr. Webster, the right of the parties in this question shall be fully and fairly examined, and none of them with more calmness than the rights of Georgia. In my own course in this matter, I shall not be dictated to by any State, or the Representative of any State on this floor. I shall not be frightened from my purpose, nor will I suffer harsh language to produce any reaction on my mind. I will examine with great and equal care all the rights of both parties. Occasion had been taken on the mere question of reference of this communication, he would not say for argument, but for the assumption of a position, as a matter perfectly plain and indisputable, that the Government had been all in the wrong in this question, and Georgia all in the right. For his own part, Mr. Webster said he did not care whether the communication did or did not go to a Committee of the Whole on the State of the Union, nor how soon it went there, and was there taken up for discussion. When he went into that committee, he should go there, not in a spirit of controversy, nor yet in

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a spirit of submission, but in a spirit of inquiry, calmly and deliberately to examine the circumstances of the case, and to investigate the rights of all parties concerned. But he had made these few remarks, to give the gentleman from Georgia to understand that it was not by bold denunciation, or by bold assumption, that the members of this House are to be influenced in the decision of high public concerns.

Upon February 9, in the debate upon the President's message, Mr. Webster observed, that the question before the House was a mere question respecting committees to which this communication was to be referred. He should confine his remarks to this question, and should not, therefore, without violating the proper order of debate, make any reply to the remarks which had fallen from the gentleman from Pennsylvania (Mr. Buchanan), on the general topics contained in the communication from the Executive. He thought the communication ought to go to some committee which might be competent to ascertain whether the whole matter was before the House, and whether any legislation would be necessary. He was not at all solicitous to send it to any particular committee; and certainly not to that committee with which he was himself connected. As one of that committee, he would say that they would neither seek the reference, nor shun it if it were made. But undoubtedly it ought to go to some committee, more especially as there was a proposition upon the table which looked to legislation on the subject. This was the ordinary and usual course in relation to executive communications, and, Mr. Webster said, he saw no reason why this should not follow the usual routine.

Mr. Webster agreed with the gentleman from Alabama (Mr. Owen), that the subject was both important and delicate. But he did not think that it was so very alarming a matter as that gentleman seemed to suppose. There were at least two sides to the question; and if there was a danger in denying the authority of any act of a State, so, on the other hand, it must be allowed there was danger in denying the validity of a treaty made under the authority of the United States, and duly rati-

fied. The whole subject was one well worthy of mature deliberation. One word, said Mr. Webster, as to the honorable member from Mississippi (Mr. Haile): When any member of the House asks of me an explanation of anything personal as to himself, I am ready to make it; if any gentleman asks an explanation as to any facts, or any argument, or a clearer statement of any argument I have advanced, I am ready, at all times, to comply with his wishes. For all other purposes, I cannot submit to be catechized; and to some of the queries which that gentleman proposed to me, I shall, therefore, give no answer.

Mr. Webster went on to say, that he had menaced nobody; he had uttered no threats, as seemed to be supposed; but, on the contrary, the tone of menace seemed to him to come from the other side, and not from his side of the question; of that, however, the House would judge. What was this whole matter? Was it offensive to sovereign States for him to say that they acted, in any particular matter, on their own responsibility, and at their peril? Sir, those States do act at their peril; and if they undertake to extend their legislation in the manner referred to, they do so on their responsibility, and at their peril. I shall not take back a syllable of what I said, either in manner or substance. I wish to be understood as repeating it, word for word, and syllable for syllable. Sir, what are the circumstances of the case? The lands over which these States claim to exercise exclusive jurisdiction have never been subject to State laws from the foundation of this Government; the control of those lands has always been with the Congress of the United States. We regulate the sale of those lands, or rather we forbid the purchase of them by individuals. We enact all general regulations concerning the Indian tribes who inhabit them. Their municipal concerns have hitherto been managed by themselves; they maintain their own peace and their own laws. It was now said, that the States of Alabama and Mississippi either had extended, or intended shortly to extend, their legislation to the lands and persons of these Indians. They will therein do what has never been done or attempted before, and what has at least a very doubtful aspect; and, when I said that

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they must do this on their responsibility and at their peril, I meant no more than that they would venture on the exercise of a power which they might be found not to possess. Does the gentleman call this language minatory, and come here a week afterwards, with a list of questions which he wishes to propound to me as to what I meant by the observations I made? I tell that gentleman that I mean what I say. I am told that the proposed measure will be the act of a sovereign State. Be it so. Is it not a possible thing that sovereign States may sometimes act in a manner which violates the Constitution? Are not conflicting laws of a State and of the United States to be discussed and settled, for or against a State, before the judicial tribunal? If I and my learned friends were in another part of this Capitol we could speak of these things without offence, and the judgment come upon them without offence. There, at least, it is admitted to be very possible, that a sovereign State may be in the wrong.

It is not my intention now to discuss the general question, or to go into an extended reply to the observations which have been made upon it; but I am told by the honorable gentleman from Georgia (Mr. Forsyth), that the courts are open, and that this question may be settled by a judicial tribunal. This might have been a remarkably good argument to address to the State of Georgia before she took the remedy into her own hands. It is a new mode of settling a constitutional question, to seize the lands in dispute, and send out the Hancock troop of horse to defend the possession of them. But, at this stage of the affair, that appeal to the courts comes with rather an awkward grace. When a man advances a claim against the lands of his neighbor, he makes his appeal to the law; but, when he forcibly enters upon possession of them, he makes his appeal to something different from the law.

Here Mr. Hamilton of South Carolina called the gentleman to order; and, when called upon by the Chair to point out wherein Mr. Webster was out of order, he explained himself as wishing to prevent any course of remark which might tend to produce excitement. The Chair decided that Mr. Webster was in order.

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Mr. Webster resumed: I have no intention to produce excitement on this subject, but I have my own opinions upon it. I believe them to be tenable, and, at a proper time, I shall not forbear to express them in this House. I have been induced, on the present occasion, to make some remarks which I should not have made, had not the inquiries of the gentleman from Mississippi called me out. Mr. Webster concluded by expressing his hope, that the matter would be allowed to take the usual course of reference to a committee for examination.

In the same debate, on February 9, Mr. Webster said, that he had been now for some years a member of this House; that, during that period, the course of argument had at different times placed him both for and against various members of it, and of various ages, and of various terms of service in the House, and he believed that gentlemen could bear witness that he had always treated them with becoming respect, and that he had always manifested this disposition in a special manner towards persons newly introduced into the House, and from whom the country had much to hope. He was not conscious of having departed from that line of conduct on the present occasion. He claimed for himself no privilege which did not equally pertain to every other member. He stood on that floor in his own name, on the responsibility of his own character, connected with nobody, with a knowledge of his own rights, and disposed to use them temperately. He had used no menace to any gentleman in this House, or to any State represented in it, and he hardly expected — But, he said, he would not go out of the order of debate to follow a gentleman who had been pronounced out of order. He had been desirous of rising, that he might reply to some of the arguments of the gentleman from Georgia. That gentleman, not confining himself to the question before the House, had gone on to state his views of the general question pending between Georgia and the United States. Mr. Webster said he did not mean to have entered into that question; but, as the gentleman from Georgia had stated it, and brought his argument to bear upon it, he

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must be allowed to take the liberty of reviewing that statement. The gentleman had, with what he called great frankness, said that he (Mr. Webster), or the committee to which he belonged, were the adversaries of Georgia.

Here Mr. Forsyth explained, and stated what he had understood to be Mr. Webster's meaning when he had said that the language of menace had come from the other side.

Mr. Webster resumed: We sometimes hear those who have a cause at issue, especially when they have any reason to doubt the result, attempting to impeach the impartiality of the tribunal which is to decide it: sometimes, indeed, they challenge a trial, professing themselves willing to go with their cause anywhere before honorable men; that its justice is so clear as to admit of no mystification; and that nothing but integrity and common sense are requisite in order to a right decision. But in other cases, we hear the advocate of a cause declaring that the ordinary tribunals are not to be trusted — they are prejudiced — and they object to go there, lest a decision should be had against them. He need not say what was the usual inference from this contrast of language. Such arguments applied here amount to neither more nor less than this: that the committees of this House are not to be trusted. But if the committees of this House are to be supposed to be under such a prejudice as to render them unfit to decide the questions referred to them, there was an end to all reference of business to them.

The gentleman from Georgia, however, thinks that there are parties in the country, and in the House, and that the committees are so organized that one party is dominant in them all. For himself, Mr. Webster said, he believed that he rather thought there were some committees of the House not *exactly* so organized. But, said Mr. Webster, parting from this, let me answer the gentleman when he asks who I meant when I used the expression "on the other side." I tell the gentleman that I speak only for myself, and for nobody else. When I entered the House the other day, I heard that gentleman speaking, with excitement and warmth, and, as I thought,

in a loud and menacing tone. What the subject was, I did not know when I came in; but, on taking my seat, I found he was speaking on the Georgia question. The gentleman sits on that side of the House, and I sit on this side; and, when I subsequently observed that the tone and menace seemed rather to proceed from the other side, I referred to the gentleman from Georgia; for he and myself were the two sides, so far as this particular matter was concerned. This was all I meant when I said that I thought the threatening language came from the other side. If it is necessary to disclaim any thought of menace on my part in stronger terms, I do it in the strongest; and, since the gentleman from Georgia has condescended to ask me the question, I answer, that I represent on this floor nobody but myself. Does the gentleman suppose that the poor pittance of respect which *my* opinion is entitled to, is to be destroyed by the insinuation that I belong to the party of the Administration? Sir, I alone am answerable for my words or actions in this House. About this subject I know no more than others—no more than what is disclosed by the papers which are in possession of all. What my own weak judgment respecting it is, the House, in due time, shall know; but I wish it clearly understood, that I stand here for myself only, and that what I say implicates nobody but my humble self. It would be unjust to say that it implicates any other person.

Mr. Webster went on to say that the honorable gentleman from Georgia had not, in his opinion, stated the question between that State and the Government of the United States with perfect accuracy. What was the subject of the present debate? It was a message, with documents, the subject of which he would endeavor succinctly to state.

In the year 1825, a certain treaty was made by the United States with the Creek Indians, at a place called the Indian Springs, by which certain lands were ceded to the United States which lay within the territory of Georgia. Had nothing prevented this treaty from going into effect, in September, 1826, these lands, pursuant to an agreement between Georgia and the United States, would have become the territory

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of Georgia. But previous to the period assigned for this treaty's taking effect, for reasons which are known to all the House, and which consisted chiefly of the dissatisfaction of a large part of the Indian tribe which were one party to the treaty, and who complained that those who negotiated the treaty were not duly authorized so to do, a new treaty was formed, the very first article of which declares, that the former treaty, made at the Indian Springs, was entirely annulled, and done away.

This is the point which the gentleman, in his statement, seemed to Mr. Webster to have wholly omitted, and it was certainly a most important point in the case now. The claim now brought forward and insisted upon by Georgia, if he understood it, was, that this first treaty at the Indian Springs, being a valid treaty, had the operation to vest the title to the lands then ceded in the State of Georgia, and that the nullification of this first treaty, which afterwards took place at Washington, and formed the first article in the treaty of Washington, could not, and did not, have the effect to divest Georgia of the title to those lands. That, said Mr. Webster, is the question. It may certainly be a very grave question — a question of great moment, respecting which I shall not be in any hurry to give my opinion.

Now, that is the Georgia side of the question. The United States side of the question is different. The United States Government, on its part, contends, that the second treaty does annul the first; that the parties who made it had the power to annul the first treaty; that, by express terms, it is annulled, in every section, clause, and article of it; and that, therefore, there is no title in Georgia to any lands not embraced within the new treaty. On this ground the Government of the United States was called upon to enforce this treaty, which was the law of the land, according to the pre-existing statute law. And what is that law? That whenever citizens of the United States shall interfere, whether as trespassers or as surveyors, to run lines on lands guaranteed to the Indian tribes by treaty, the United States shall resent such infractions of treaty stipulations, and shall punish such persons as offend against them.

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Now, by the last treaty with the Creeks, this protection of the United States was guaranteed to the Creek Indians, respecting all their lands lying beyond a certain line. The law of the United States, in so many words, provides distinctly for this case.

The State of Georgia, by its constituted authorities, acting on their ground of construction, and directly in the face of the second treaty (whether rightfully or not, I shall not now attempt to decide), sent their surveyors over that line, with orders to survey the land as pertaining to Georgia. The Creeks immediately called upon the United States to fulfil the guarantee of protection contained in the fourteenth article of the treaty of Washington. Georgia proposed to maintain her surveyors by military force, and the United States, on the other hand, is called upon by the Indians to maintain the faith of a treaty with them. This is a state of things deeply to be regretted; it is regretted by none more than by me. But, regretted or not, that is the question at issue. It is plain that if Georgia considers herself called to maintain her surveyors by force, and the United States Government considers itself called upon to maintain the treaty by force, there must be a collision.

Now, under such a state of things, what objection can there be to give to the presidential communication the usual course—to refer it to a committee, when all the facts can be ascertained, the question deliberately examined, and by whom, perhaps, another measure may be reported as expedient—I mean the measure referred to in the joint resolution submitted by the gentleman from Georgia—an appropriation of money to buy out the Indian title. For myself (said Mr. Webster), even if I were ever so well satisfied that Georgia was wrong, I should still be opposed to going to extremes, if the matter could possibly be arranged in any other way. If, in the mean while, the whole subject can be arranged satisfactorily by a new treaty, for the purchase of the remaining land, certainly every honorable and fair man would wish that it should be. The amount of money necessary to accomplish such an object would be of comparatively little consequence. However, there

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did appear to Mr. Webster to be a great propriety in sending the subject to some committee. Far be it from me (said he) to desire to be among those to whom it is sent. I have no itching for the decision of such a subject.

But, to whomsoever it shall go, the gentleman from Georgia need be under no alarm as to the effect of their report. That report, whatever it shall be, will be subjected to the acute and deliberate examination of the gentleman himself, and of every other friend of the Georgia interpretation. If the report be adverse, gentlemen are here to reply to it. If there be a flaw in it, they will find it. They are not too unskilled to complain. Georgia is ably represented here, and any errors of a committee would no doubt be promptly exposed.

The gentleman from Georgia asks what I mean, when I say that, if the States attempt unauthorized legislation, they will attempt it on their own responsibility, and at their peril? Do I mean to drive them out of the Union, or that the other States shall make war against them? Sir, the gentleman has, in the alarm of his imagination, or from the love of effect, exaggerated and strained what is a very common phrase. When we say that, if an individual does a particular thing, he will do it at his peril, do we mean, that if he does it, he will be annihilated? If one man says of another, that if he does such a thing, he will do it on his responsibility, is it to be understood as meaning that, if the man does it, he must be pistolled? Sir, I stand by the expression. I say that a State, like an individual, must necessarily take the peril which necessarily follows a wrong action, if it commits one; which means no more than that it must incur the peril necessarily accruing from such a course of action. I mean that if it shall be found that these States, by extending their legislation over the Indian territory, come in collision with the United States, and with the provisions of treaties, they must be answerable for the consequences.

And, sir, is there no peril but on one side of this question? The Government of the United States incurs the same liability that a State incurs—the liability of having acted improperly, and violated the Constitution of the country. Sir,

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until I lose my own sense of self respect, I believe that I shall be incapable of using, toward any State, any language incompatible with the respect which I owe to myself, and the deep respect which I very sincerely feel toward all the States. Mr. Webster concluded by saying, that if this communication should not go to one of the standing committees of the House, he should then move that it go to a select committee, but most certainly with no wish that he should be one of that committee.

Speech on the British Colonial Trade Bill

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
March 2, 1827.¹

MR. WEBSTER said, that he remained of the opinion which he had before expressed, that it was better to pass no law whatever on the subject, than to adopt the bill before them without amendment. He was hardly able to persuade himself that the bill was fully understood, even by those who had supported it. If his own opinion, as to its effect and operation, were not entirely wrong, some misconception on that point, he thought, had existed in another place. The existing state of law was somewhat complex, and the bearing on this bill on that state of law was not to be comprehended without careful examination. He believed, in truth, it was greatly misunderstood. He would first state what he considered the situation of things would be if the Senate's bill should pass without amendment; and would next show how that state of things would be produced by the provisions of the bill.

As to the first point, he agreed entirely with the honorable member from Connecticut (Mr. Tomlinson), that, if the Senate's bill should pass without amendment, and no arrangement should take place before the 31st of December next, British vessels would from that time be admitted into the ports of

¹ This bill originated in the Senate, and was entitled "A Bill to regulate the Commercial Intercourse between the United States and the Colonies of Great Britain." It was amended by the House, but the Senate would not agree to the amendment. Mr. Webster spoke in support of the amendment, which was adhered to by the House.

the United States, without the payment of any discriminating duties whatever; while our vessels would be entirely excluded from all intercourse with the British West Indies and other Colonies. That this was the result of the enactments in the Senate's bill, would be, and must be, evident to every one who would read with attention the existing laws, and the bill itself. Indeed, he knew not whether it had been denied, in the House, that such was the necessary effect of the bill, though a different view appeared to have been taken elsewhere.

He would now endeavor to show how this effect arose; and, for this purpose, would ask the attention of the House to the particular provisions of the three existing laws which bore on this subject; namely, the acts of 1818, 1820, and 1823.

By the first of these, that of 1818, it was enacted, that no British vessel should come to this country from such British colonial ports as were ordinarily shut against our own vessels. There are, in the law, other provisions, but they are all intended to render effectual this main enactment.

The act of 1820 is but what it professes to be, supplementary to the foregoing. Instead of using general words of description, in speaking of the colonial ports, it enumerates them all, and subjects to forfeiture and confiscation every British vessel arriving, by sea, from the British Possessions on this continent, and the West Indies. Neither this act, nor that of 1818, touches, at all, the intercourse with Canada. The interdicted vessel must be one that comes by sea; of course, the lake navigation is not affected by either of these laws.

Now, we are to remember, that, in addition to these two acts, there existed a prior law—a law, indeed, as old as the Government—he meant the law imposing discriminating duties on foreign vessels. This law always applied to all foreign vessels, except where, by treaty, or other reciprocal regulation, we had stipulated that it should not apply. These discriminating duties had their origin, not in the act of 1818, nor in that of 1820, but in this standing law—the last re-enactment of which, he believed, was in 1816.

So far, then, there would be no difficulty in understanding the case. We had a standing law imposing discriminating

duties on foreign vessels; this law was applicable to British vessels engaged in the colonial trade. Then, by the acts of 1818 and 1820, we entirely prohibited British vessels from coming to our ports from the Colonies, because our own vessels were not permitted to visit those Colonies. These laws produced their effect. Early in 1822, it was foreseen that Great Britain would probably soon take off her monopoly, and admit us to our share in the trade. And, accordingly, the act of May 6, 1822, was passed, providing, in substance, that, if she should open her ports to our vessels, the President might, by proclamation, open our ports to her vessels. She did so open her ports; and the President issued his proclamation, opening our ports to her vessels, in August of that year. This opened the intercourse to vessels of both nations; but our discriminating duties still continued.

Then came the act of March 1, 1823; and it was upon the operation of this act that he thought the greatest misconception prevailed. The members of the House had the act on their tables, and he begged them to look at its provisions. This act, which is unlimited in its duration, suspends, by express words, the act of 1818 and the act of 1820; the suspension to continue so long as the act itself continues. In other words, it repeals the two former acts; subject, however, to be revived when the repealing act itself shall be repealed. This is the first section. He (Mr. Webster) would pass over, for the present, that provision of the act which had caused so much discussion: he meant that which authorized the President to abolish the discriminating duties on British vessels, when Great Britain should abolish her discriminating duties on our produce. That part of the case he was not now considering.

This act of 1823, then, opened the trade to British vessels coming from the Colonies to our ports. It did not impose the discriminating duties — it found them already existing — and it left them as it found them. It opened the trade subject to those duties. It opened the trade to British vessels, because England had opened the trade to our vessels. But, as England might again close that trade against our vessels, so it was

necessary to make some proper provisions, that, in such an event, if it should occur, our trade might be again closed against her vessels. For this purpose, the sixth section was introduced, which is in the following words :

“And be it further enacted, That this act, unless repealed, altered, or amended, by Congress, shall be and continue in force so long as the above enumerated British colonial ports shall be open to the admission of vessels of the United States, conformably to the provisions of the British act of Parliament, of the 24th of June last, being the forty-fourth chapter of the acts of the third year of George Fourth. But if, at any time, the trade and intercourse between the United States, and all, or any, of the above enumerated British colonial ports, authorized by the said act of Parliament, shall be prohibited by a British Order in Council, or by act of Parliament, then, from the day of the date of such Order in Council, or act of Parliament, or from the time that the same shall commence to be in force, proclamation to that effect having been made by the President to the United States, each and every provision of this act, so far as the same shall apply to the intercourse between the United States and the above enumerated British colonial ports, in British vessels, shall cease to operate in their favor; and each and every provision of the ‘act concerning navigation,’ approved on the 18th April, 1818, and of the act supplementary thereto, approved on the 15th May, 1820, shall revive, and be in full force.”

We now know that an Order in Council, prohibiting our vessels from visiting the British ports (and that is the “trade and intercourse” intended by the act), has actually issued; and it is in the power of the President, at any time, at his discretion, to issue his proclamation stating that fact, and from that moment the acts of 1818 and 1820 would be revived, and all British vessels again excluded from our ports.

Such, then, are the enactments existing at the present moment. The laws of 1818 and 1820, prohibiting British vessels from visiting our ports, are not now in operation. They are suspended by the act of 1823. While that continues in force, those laws are annulled, or at least their operation and force suspended. If Congress should now repeal the act of 1823,

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those laws would revive, and be permanently in force; if Congress should suspend that act, those laws would revive, and be in force during such suspension; and when such suspension should cease, then those laws would themselves be again suspended.

Bearing in mind this existing state of the laws, he wished the members of the House now to examine the several provisions of the bill from the Senate, then before them.

Its first provision is, that all discriminating duties on British vessels and their cargoes, coming from the Colonies, from and after the 31st of December next, shall cease, anything in the act of 1823 to the contrary notwithstanding. These last words had no legal meaning whatever. The discriminating duties, as he had already observed, were not laid by the act of 1823, but by previous laws.

This reference, therefore, to the law of 1823 is wholly misplaced. That act, as he had already repeatedly stated, found the discriminating duties existing, and it not only did not repeal them, but left them still existing, as any one will see who will turn to the third section of that act itself.

But this bill, now under consideration, said Mr. Webster, does repeal the discriminating duties, by whatever act laid; the repeal to take place on the 31st day of December next. This is the precise effect, and the whole effect of the first section. From that time, there will exist, if this bill pass, no discriminating duties, till Congress pass another law. Now, he must say, he thought, from what he had heard, that this point had been elsewhere viewed in a wrong light. It had been viewed as if the discriminating duties had been created, or imposed, by the law of 1823; whereas, they in truth existed by virtue of the law of 1816; and the first section of this bill repeals the law of 1816, so far as it applies to British vessels coming from the Colonies after the 31st of December; and it abrogates and annuls all discriminating duties on such vessels, unconditionally and permanently. Whether this were intended or not—he hardly supposed it could be intended—yet, in fact, such was the unquestionable effect of the first section of this bill.

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The second section is in these words :

"And be it further enacted, That the act passed on the 1st of March, 1823, entitled 'An act to regulate the commercial intercourse between the United States and certain British ports;' the act passed the 15th day of May, 1820, entitled 'An act supplementary to an act, entitled "An act concerning navigation;"' and the act entitled 'An act concerning navigation,' passed on the 18th of April, 1818, shall be, and are hereby, suspended, until the 31st day of December next, except so much thereof as imposes discriminating duties on the tonnage of foreign vessels and their cargoes."

Now, the whole effect of this section is simply this ; namely, to take away, or suspend, the President's power of issuing the proclamation prohibiting British vessels from coming into our ports until the 31st day of December, and to continue things as they are now, till that time. It first suspends the act of 1823. If it had stopped here, the acts of 1818 and 1820 would have been revived and in force during the suspension ; but it proceeds to suspend those acts also ; so that the trade will be left open to British vessels, and there will be no power in the President to stop it.

What, then, will be our situation when the 1st of January comes ? Why, it will be this : the laws of 1818 and of 1820 will no longer be suspended, it is true, by virtue of the bill now before us ; but, then, the act of 1823 will be again in force, and those former laws will be suspended by force of that law—so that we shall be precisely where we are now, except that the discriminating duties will be then absolutely and altogether repealed by the operation of the first section of this bill.

The British will still be able to come here, and to come here even without the payment of alien duties, until and unless the President shall issue his proclamation, or Congress pass some further law ; although we shall then have been excluded from the British ports for a whole twelvemonth. All this, sir, said Mr. Webster, must be manifest to any one who will read the bill.

To this course he (Mr. Webster) was decidedly opposed. He thought the House could not be too prompt in repeating

the declaration which this Government had ever maintained, that we would have no commerce with countries or places where our own ships were not permitted to go. To give up this principle would be, in his judgment, to abandon one of the highest interests of the country; to doubt about it, was to hesitate on that interest. While he would propose the most reasonable terms to the English Government, and while he would give the most ample time for a deliberate consideration of those terms, he would, at the same time, express the settled resolution of this Government, in the form of law, that, if reasonable terms were not acceded to, the intercourse must cease. On this point he would leave our great commercial rivals nothing to hope. It was the more necessary, he thought, to incorporate this provision into the bill itself, since the English Government, he must confess, much to his surprise, had recently manifested a disposition to decline negotiation on the subject. If, then, the matter is to be settled by legislation, the sooner it is so settled the better.

The last section of this bill, said Mr. Webster, provides, or intends to provide, that, if, before the 31st of December, the English Government shall open the trade to us without discriminating duties on their part, then the President may issue a proclamation, and the trade is to be opened on equal terms on our part. This was all very well, so far; but here the amendment proposed by the honorable member from Connecticut was to apply. It was to be added to the bill, and was in these words:

“ And if no such proclamation shall be issued on or before the said 31st day of December next, then, from and after that day, the aforesaid act of the 18th of April, 1818, and the aforesaid act of the 15th of May, 1820, shall revive and be in full force, and the aforesaid act of the 1st of March, 1823, as also the first section of this act, shall be repealed and annulled.”

The object of this amendment was, and its effect would be, that, if no arrangement should take place, by treaty, before the 31st of December next, nor any act of Parliament or Order in Council should meet the propositions contained in

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this bill, the acts of 1818 and 1820 would be in force, and British vessels from the Colonies would be excluded from our ports, as ours are now excluded from hers. It will not rest, as it ought not longer to rest, in the President's discretion, to exclude them, or not, by proclamation. The sense of Congress will be expressed, and the English Government will know, once for all, what it has to expect. That ground which, most assuredly, we must ultimately take, should be taken now. He thought December too remote a period; and that the intercourse of British vessels from the Colonies ought to be stopped much sooner — as soon, indeed, as fair notice could be given. But that day being named in the bill, he would acquiesce in it, if the bill should be so amended as to declare, that then, even then,^a distant as the period was, the trade should cease, unless we were allowed to partake in it. As to the bill, in its present shape, he saw nothing in it but concession — plain, unmixed concession. The British Government has now, for some months, excluded our vessels altogether from her colonial ports. We have been in session three months, and have not met that exclusion by a corresponding exclusion on our part, or by any other measure. If we rise without passing any law, it will be in the President's power to adopt a corresponding measure. But this bill, by suspending the act of 1823, which gives that power, proposes to take away the power. We shall rise, then, having done nothing ourselves, and having taken away all power from the President to do anything.

But this is not all, nor, indeed, is it the worst. We propose to go further. Having thus left the trade to the exclusive enjoyment of British vessels, paying only the alien duties, until December, this bill then provides, that, after December, those duties themselves shall cease; and, unless and until the President shall issue his proclamation, British vessels will not only enjoy an exclusive monopoly of the trade, but will absolutely enjoy that trade without the payment of any discriminating duties whatever: for it was constantly to be borne in mind, that, by the Senate's bill, the trade, though not open to us, will not cease in British vessels, after December, unless a proclamation issue. It is to produce this very

effect; it is to provide that the trade shall then cease, unless we are allowed to partake in it, that this amendment is proposed.

For one, he held the opinion firmly, that, looking to the great object of naval respectability and naval power, and looking, also, to the severe and arduous competition which the shipping interest of this country was now obliged to sustain, all commercial regulations ought to be adopted with a careful and constant regard to that interest. As between commerce and navigation, if, under the pressure of circumstances, either must yield something of its convenience, he had no hesitation to say on which side that concession should be made. He would never consent, under any circumstances, that any branch of the commerce of the country should be exclusively carried on in the ships of foreign nations.

If others could doubt on that point, he could not; and he should strenuously resist any approach toward yielding it. This bill appeared to him to make such an approach. He believed nothing was to be gained by that excessive candor which borders on weakness. He thought our true policy was to maintain the principles which we ever had maintained; to insist on all the just interests of our shipping and navigation; to say, at once, that, if we cannot go to others, others shall not come to us; to propose fair and equal terms, and to say, at the same time, and by the same act, that, if those terms be not accepted, the intercourse must terminate; thus making known our moderation, our reasonable forbearance, and delay — but making known, also, at the same time, our firm determination to insist on equality of right — in a matter interesting, not only to the prosperity and wealth of the nation, but to its power and its glory.

Under these impressions, he hoped the House would insist on this amendment; and, without its adoption, he should certainly vote against the bill.

The gentleman from Georgia (Mr. Forsyth) and other gentlemen had said, that, by insisting on the amendment, the bill might be lost, and that the President would then be bound, by peremptory duty, to close the trade by proclamation. He

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(Mr. Webster) still found it difficult to persuade himself that the other House, on reflection, would not agree to this amendment. He would put it fairly to their choice. He would leave the option with them. If they preferred an immediate closing of the trade, to the bill as amended, be it so. It was for their consideration. For his own part, he could only say that he thought the bill, in its present shape, was misunderstood by those who supported it, and incompatible with the interest and honor of the country.

Mr. Webster then adverted to the other branch of Mr. Tomlinson's amendment, which was to alter the phraseology of the third section of the Senate's bill, and thought the amendment useful, and, indeed, accessary.

Remarks on the Breakwater at Nantucket

UNITED STATES SENATE, May 2, 1828.¹

MR. WEBSTER said the true question before the Senate was, as he had stated before, whether the law of April, 1824, should be effectually repealed, and all further proceedings under it stayed. That law would not execute itself. Without appropriations to carry on its purpose and effect, it must be a dead letter. It is now proposed to declare that nothing shall be appropriated to any surveys, except those already begun. In other words, that the whole system of internal improvements shall be arrested, and stop where it is. I do not, Mr. President, say that this is an unfair object. Those who deny to the Government the power of making internal improvements, and we know there are such, naturally wish to restrain the exercise of the power, and prevent it altogether. On this question, public men divide; and the general opinion of the community must ultimately settle it, one way or the other.

The law of 1824 was passed to avoid the necessity of particularizing, by law, every survey which should be made by the authority of the government. It referred the subject of these preliminary surveys, within certain defined limits and restrictions, to the executive. From that time the work has

¹ A Bill making appropriations for Internal Improvements, having passed the House of Representatives, the Senate Committee of Finance reported an amendment providing that the appropriation named in a certain clause of the Bill, should only be applied to "examinations and surveys already commenced or unfinished, under the act of the thirtieth of April, 1824." At the session of 1827-28 a petition was pending before both Houses of Congress for the erection of a breakwater at Nantucket. The amendment proposed by the Senate Committee of Finance was regarded as hostile to this and other measures of Internal Improvement, and was opposed by Mr. Webster.

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gone on in that manner, under annual appropriations. This amendment is an act of hostility aimed at the whole system. It goes on grounds which lie against all such measures, under all circumstances. It was not his intention, Mr. Webster said, to go far into the general subject at present. It was well known that the idea of aiding in works of internal improvement was seriously brought forward in Mr. Gallatin's Report in 1809. Events occurring in the five or six following years withdrew attention from the subject, but it was revived, with new zeal, and under new auspices, after the peace.

He had himself, Mr. Webster said, been in favor of exercising the power, from the first time he came into Congress, and his opinion was not altered. He saw evidently now existing a spirit of hostility to these undertakings by Government, and as he had already said, it must be ultimately decided by the people themselves.

He should not have troubled the Senate on this occasion, but for a single occurrence. The honorable member from South Carolina (Mr. Smith), in opposing the whole system, had commented on some of the plans and projects for which the aid of Government was now solicited. Among others he alluded to the improvements contemplated near Nantucket, by a breakwater. The honorable member seemed to think very lightly of this, both with regard to its practicability and its importance. He (Mr. Webster) professed to know no more of the former than the surveys had taught him, but he was well informed by competent judges that the latter was not likely to be overrated. A vast commerce passes through the sound between the Island of Nantucket and the continent. If an artificial harbor be necessary for the accommodation and safety of this commerce, the estimated expense is not out of proportion to the magnitude of the object. The gentleman from South Carolina had said that near two millions of dollars had been expended on the Cumberland road. He (Mr. Webster) did not mean to underrate the value of that great line of communication and transportation, but if we look to the amount of transportation through the sound we shall find it very far surpassing that of the road. A vast coasting trade

plies through this sound, which is a sort of defile, a narrow passage, obstructed with rocks and shoals, and deficient in convenient and safe harbors. The anchoring of a floating light vessel in the sound had furnished the means of ascertaining the number of vessels which passed through it annually; and perhaps some members will be surprised to hear that that number does not fall short of sixteen thousand. Nantucket itself (said Mr. Webster) is a very striking and peculiar portion of the national interest. There is a population of eight or nine thousand persons living here on the sea, adding largely every year to the amount of national wealth by the boldest and most persevering industry. They have been twice reduced to the very verge of ruin, and yet have recovered by new efforts and untiring toil. In 1775, when Mr. Burke, in his speech in the House of Commons, on the resolutions for conciliation with the American Colonies, alluded, in such terms of eulogy, to the Nantucket whale fishery, there were one hundred and fifty ships engaged in that trade, and spread over every quarter of the ocean. There were employed upwards of two thousand men. They were even then found "among the tumbling mountains of ice, and penetrating into the deepest frozen recesses of Hudson's Bay and Davis's Straits. Again, they pierced into the opposite region of polar cold, and were at the antipodes engaged under the frozen serpent of the South. Places which seemed too remote and romantic objects for the grasp of national ambition, were but stages and resting-places in the progress of their victorious industry. Whilst some of them drew the line and struck the harpoon on the coast of Africa, others ran the longitude and pursued their gigantic game along the coast of Brazil. No sea but what was vexed by their fisheries. No climate that was not witness to their toils."¹

At the end of the war, of the one hundred and fifty ships but fifteen remained, the rest had been taken by the enemy. At present, I believe, they have sixty-five or seventy-five ships engaged in the whale fishery, with an aggregate of thirty thousand tons of tonnage, and of the value of two millions of

¹ Burke's Speech on Conciliation with America, March 22, 1775.

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dollars. Their history is interesting. An intelligent friend, a citizen of the Island, has furnished me with a note of the progress of this branch of industry, which is in the highest degree honorable to the spirit of enterprise which has animated the people of that place for more than a century and a half. They are well entitled to public encouragement. Their harbor is bad, and in addition to the accommodation of the coasting trade and other interests, a breakwater would be of the greatest utility to them. I hope their application will not be prejudged. Gentlemen will find the subject to be one full of interest and importance; and as my colleague intends, ere long, to bring it to the consideration of the Senate, I hope it may have a fair hearing.

On the Resolution Regarding Instructions to Panama Ministers

UNITED STATES SENATE, February 27, 1829.¹

MR. WEBSTER said, that nothing was farther from his expectation, than that a resolution calling for information, a motion so constitutional, so conformable to the practice of both Houses, and often so necessary, should have met with opposition, or produced debate. He wished for no contention; he courted no controversy. He had no desire to create new, or to revive old topics of dispute. It had not occurred to him that any such consequence would naturally follow from this resolution; and it would not escape observation, that, after the modification of it had taken place, he had been asked to withdraw the call for the yeas and nays, upon the supposition, doubtless, that no opposition was intended. The affair, it seems, had taken another turn. But, whatever course the discussion should take, he should not imitate the example of wandering into extraneous and irrelevant matter. Still less should he attack individuals, or allude to occurrences in no way connected with this subject, for the purpose of making personal observations, or inflicting pain. He intended, on this and other occasions, to

¹ On February 26, Mr. Webster offered the following resolution:

"Resolved, That the President of the United States be requested to communicate to the Senate copies of the instructions given to the Ministers of the United States to the Congress of Panama; and of the communications of the other Governments represented at that Congress, to the Government of the United States; or so much thereof as may be communicated without detriment to the public interest."

The words in italics were stricken out during the debate, and after the word "Senate," the words "*confidentially, and in its Executive character,*" were inserted.

discharge his public duties with decorum towards all public men, and with abstinence from asperity and personal vituperation and reproach. As to the resolution itself, common justice required its adoption. The resolution, as originally framed, requested that the instructions to our Ministers at Panama should be communicated to us, so far as the public service would properly allow them to be made public. This was the usual course. It was customary *in re*, and in relation to all negotiations, either pending or closed. How long was it since a member from Maine had made a similar call for the correspondence of our commissioners under the treaty of Ghent? This call had been made for the purpose of publishing that correspondence, although it related to a question of great importance still pending; nevertheless, it was readily acceded to, or, according to usage, it was limited by reference to the discretion of the President.

With the same limitation, he had now moved this resolution; and it had been immediately objected to. To remove all objection, he had then so modified it as to require the information to be communicated confidentially, so that the Senate itself might judge what part could be properly published. But, although this seemed for the moment satisfactory to everybody, it is now opposed with the same earnestness as before. He had been asked by the member from Virginia (Mr. Tazewell), if he had seen the instructions? He was willing to answer, and he answered, that he had not. He had been asked again, as if that could be possibly a proper question on such an occasion, if the President wished the instructions published? To which, also, he was willing to answer, that he knew nothing of the President's wishes on the subject. He had called for these instructions on the ground that this was a proper time to make them public. The occasion had passed by. The mission had become a part of the political history of the country. It had been a question which had much divided the opinions of public men. Was anything more just or proper, than that now the country should have a full view of the whole subject? To what end does the member from Virginia declare, with such emphasis, and enforce, with so much repetition, that there are majorities and

minorities on this floor? Does he wish rather to rally a party, than to take the sober judgment of the Senate on this question? Does he mean, when other arguments fail, to accomplish his end by talking of parties, and of the propriety of majorities resisting motions made by those in the minority? Was it the member's object to preserve strong lines of distinction between majorities and minorities? Certainly it was the ordinary effect of such a tone of argument as had now been resorted to, to preserve such lines; and if what was both just in itself, and according to uniform practice, was to be resisted by the arguments of majorities and minorities, distinctions of that kind were very likely to prevail, unless, indeed, individuals should, ere long, undertake the task of thinking and acting for themselves — an event, he hoped, not yet to be despaired of.

He had already said, his original object had been to request the President to send all the instructions, or so much thereof as he thought might, with propriety, be made public. This being opposed, because it left the matter in the President's discretion, he had altered his motion so as to ask for the whole, and to request it to be sent confidentially. This was the present shape of the question. If the instructions come here, they will be under our control. We shall be able to judge what may safely be published. Are gentlemen afraid of this course? Dare they not trust the Senate? Dare they not trust themselves? If the Senate should refuse to publish any part, still the motion will have been proper, because it was proper that the Senate itself should see the instructions. It had been asked, why does not the President himself publish them? He did not know that the President wished them published. Whether he did or not was wholly immaterial. This motion was not made for the President, but for the country. It was to enable the people to see the real character of a mission, about which so much had been said. And it was somewhat singular, he thought, that gentlemen should refuse all opportunity to make the President's instructions public, who had taken care to make their own speeches (delivered in closed doors) against the mission, public. The member from Virginia himself, had favored, not only the Senate, but the country, with

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his objections to the mission. After long debate in the Senate, the injunction of secrecy had been removed, and the debate published. These speeches had long been before the country; and was it not fair now to have a sight of the conduct of the Executive itself? Gentlemen said the Executive was instructed by their discussion; and that the instructions will not show the original objects of the mission. But how could this be known till the instructions were seen? All that was matter of argument. Gentlemen seem to wish the public judgment to be formed, with their own views made known, while those of the Executive should be kept secret. The people were to form an opinion of the President's objects and intentions, not from the instructions given by himself to the Ministers, but from the conjectures, the surmises, the imputations, of his opponents! All these last were to be spread abroad, while so plain an act of justice as to let the President speak for himself, through his instructions, was to be refused. Did gentlemen so much fear confutation from these instructions? Were they so apprehensive that, wheresoever these instructions should see the light, the whole fabric of their opposition to the mission would vanish? Did they feel safer to combat in the dark than in the light? They had seen no harm in making their own views of this mission public. How is it that they now see so much harm in making equally public the views of others?

For his own part, he felt confident that this parade of opposition would not answer its end. The people will naturally desire to see the instructions given to our Ministers. It will be esteemed but just to publish them, now that the occasion is passed, and the omission itself has become matter of history. After all that had been said of majorities and minorities, he trusted that the Senate would feel it due to its own character, to its own sense of justice and propriety, and to the country, to accede to the resolution; since, sooner or later, the country would require the publication of what is now requested.

On the South Carolina Canal and Railroad Company Petition

UNITED STATES SENATE, January 18, 1830.

MR. WEBSTER said he rose to present the petition of the South Carolina Canal and Railroad Company, praying Congress to authorize a subscription, on the part of the Government of the United States, of two thousand five hundred shares of the capital stock of that company. The railroad, contemplated by the petitioners, was to extend from Charleston to Hamburg, in the vicinity of Augusta; and the petition sets forth the practicability of the intended work. The enterprise certainly was one of a very laudable nature, such as had, in other instances, met encouragement and assistance from the Government of the United States, and it was with pleasure that he presented it to the consideration of the Senate. It had been confided to his hands from no disrespect, certainly, towards the honorable gentlemen who were Senators from South Carolina, but solely because the petitioners were unwilling to trespass on the reluctance which the honorable Senators from South Carolina naturally felt, or might be supposed to feel, to presenting petitions for aid from the Government of the United States, in cases in which their known opinions, as to the constitutional powers of Congress, would oblige them to oppose the prayer of the petitioners. For his own part (Mr. Webster said) it was well known, that, during the whole time in which he had had any connection with Congress, he had uniformly been in favor of what was called internal improvement, when applied to objects of sufficient magnitude and importance to be properly called national. And, while he admitted the necessity of great caution

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and wisdom in the exercise of the power, he must still say that every day convinced him, more and more, of the necessity of such exercise, in suitable cases. He would take occasion to add, that he was a thorough convert to the practicability and efficacy of railroads. He believed that the great results which the power of steam had accomplished, in regard to transportation by water, were not superior to those which it would yet accomplish, in regard to transportation by land. The only doubt was, as to the amount of cost; and that was a point which experience would shortly solve, he hoped satisfactorily. He would only add, that, while he felt pleasure in presenting this petition, he looked forward, with equal pleasure, to the time, he hoped not distant, when it would be his duty, in conjunction with his colleague, to ask a subscription, by Congress, to the Massachusetts Railroad, a contemplated work, which, if executed, would facilitate intercourse between several States, and be felt, in its beneficial effects, all the way from the bay of Massachusetts to the mouth of the Ohio. When the proper time should come, he doubted not the Senate, and the other branch of the Legislature also, would give to that enterprise such aid and assistance as it should be entitled to by the consideration of its magnitude, and its obvious public utility and importance.

Speech upon the Bill for the Relief of Insolvent Debtors

UNITED STATES SENATE, March 1, 1831.

THE bill for the relief of certain insolvent debtors of the United States was then taken up, on motion of Mr. Webster.

He said, the object of this important and long desired measure was to enable the Government, in proper cases, and by a just and safe proceeding, to compromise with certain of its insolvent debtors. He looked on this object as equally politic and humane. The relation of debtor and creditor was a delicate one; many practical consequences ordinarily sprang from it; and it was not expedient that large numbers of persons should bear this relation to the Government, without the hope of ever changing it. It naturally cherished feelings not the most friendly, to the discharge of social and political duties. Hopeless debt, too, terminates the active agency and effective efforts of most of those who have become subject to it. Their exertions, their enterprise, their usefulness, are in a great measure lost to society. Few will struggle under a weight which they know, struggle as they may, can never be moved. Few will exert themselves, under the consciousness that the utmost exertion will never enable them to throw off or to break the chain which binds them, and to place themselves again in a condition to enter the employments, the business, and the engagements of society. It was wise, therefore, in his opinion, that every hopelessly insolvent debtor to Government should be able to ask inquiry into his case, and the causes of his inability, and to show his honesty and his misfortune, and then have the power of making his peace with his creditor; to have

his *quietus*, in the language of the old law, and be encouraged, once more, to such efforts, and such services, as his social and domestic duties may require of him.

This being the general object of the bill, said Mr. Webster, it proceeds, in the first place, to distinguish clearly and broadly between mere debt and official delinquency. This distinction is founded, not only in true policy, but in correct morals also. Unpaid debt is one thing; violated trust very much another thing. Delinquency, or failure in the discharge of official duty, finds neither favor nor indulgence in any of the provisions of this bill. Principals in official bonds, and all persons who have received money to be paid into the treasury, or who have received it from the treasury, for public disbursement, are cut off from all its benefits. This is just. It is not unworthy of remark, however, that, in the history of our Government, the public has lost infinitely less by public debtors, than by public officers and servants. Six or seven hundred millions of dollars have been received into the treasury, almost all by being first secured by bond, with only a loss of the half of one per cent. This fact speaks much, not only to the credit of the system, but also for the integrity and punctuality of the American mercantile character. No Government in the world, I believe, collects its revenues with more certainty, or more economy, than ours. But it must be confessed, that when we proceed to the next stage, and look into the disbursements made out of the treasury for the objects of government, and to the degree of fidelity and correctness which has there prevailed, our experience has been far less gratifying. The selected servants of the Government have lost us thousands, where those whom the laws and the course of business have compelled to become our debtors at the custom-house, have hardly lost us a dollar. The mercantile character has richly earned this distinction. In all times it has shown itself worthy to be relied on; in all times, in prosperity and adversity, in peace and in war, amidst all the events that usually affect national income, or shock systems of finance, the Government has always felt that what was due to it from the commercial community was to be counted on as so much already in its coffers. Debtors of this class, becoming

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insolvent without imputation of fraud or dishonesty, have fair claims to a discharge. On the other hand, let the severity of the law continue towards public delinquency. Let those who solicit public trusts understand, once for all, that a rigorous rule will be applied ; that a perfect accounting will be exacted ; and that debts, created by disregarded duty, and a violated trust, is a fetter never to be broken.

The bill, sir, proposes a public and open proceeding, to ascertain the facts in each particular case. The insolvent debtor is to apply by petition, setting forth the facts of his case. The petition is to be referred to commissioners, who are to inquire into it, with power to examine the petitioner, and any other persons, on oath, respecting the whole matter before them ; and they are to be attended by an agent on the part of the Government, to interpose objections, and demand explanations of whatever may appear to require explanation. The facts thus ascertained are to be referred to the Secretary of the Treasury ; and thereupon he is authorized to compound and compromise the debt, according to the circumstances, and discharge the debtor.

It might be expected, perhaps, that the bill would have provided that, in every case, if no fraud or unfairness appeared, and clear insolvency and inability to pay were made manifest, a discharge should be granted of course. But, from what was known in regard to some existing cases, it was thought better still to leave the Secretary some discretion. It is known that there are cases in which, by the contributions of friends and connections, or other means, considerable sums would have been paid if discharges could have been obtained ; which cases, without such prospect of discharge, would be cases of great and total loss. So that one effect of this very measure will doubtless be, to cause receipts into the treasury of considerable sums, on account of debts, no part of which, without it, would ever have been collected.

The next important characteristic of the bill is, that in its operation it is altogether retrospective. It is not a standing provision. It applies only to past cases. Its object is to settle up and close cases of insolvency, long since happening, and still existing ; to make a sort of half-century jubilee, and set all

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the honest and unfortunate once more free from the demands of government debts.

We see that, in the individual concerns of commercial men, it is found indispensable that some system, having the actual effect of a system of bankruptcy, should be adopted. Congress does not seem disposed to exercise its undisputed power of establishing such a system for the whole country, by law; no State can establish such a system, except to a partial extent; and most of the States have not attempted to provide any at all. But voluntary assignments, and voluntary discharges, have come into very general use, from the absolute necessity of the case. Individuals thus establish rules of distribution of effects, and for the discharge from debts, for themselves. But Government has not the power which belongs thus to a private creditor. The treasury cannot compromise or discharge the debt, in any case, without full payment. Under this act, as to past obligations, it will possess that power; and when its operation shall have been seen and tried by experience, it will be competent to Congress to repeat the provision, at a proper time hereafter, or not to repeat it, as its wisdom shall see fit.

As I do not anticipate any objection to the principle of the bill, I shall no longer press a claim on that time and that attention of the Senate, which are demanded by so many other urgent subjects. I wish, however, not to resume my seat before I express my sense of the obligation which the public is under to the distinguished gentleman in the other House, on whom it devolved, in the discharge of his duties there, to take the lead in this measure.¹ I feel that he has rendered a sub-

¹ James Buchanan of Pennsylvania. On February 10, 1831, Mr. Buchanan said "he was about to ask a favor of the House, which would probably be the last he should ever ask of it. It was to indulge him so much as to go into Committee of the Whole on the State of the Union, and to take up the bill for the relief of certain insolvent debtors of the United States. He had had the bill in charge for two years, and during all that time the parties interested had, with excited feelings, been looking for its passage." Mr Buchanan made a feeling appeal to the House in favor of taking up the bill. The House consented, and the bill finally passed, March 27, 1832. At the time of its passage Mr. Buchanan was no longer in the House, having been appointed Ambassador to St. Petersburg in 1831.

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stantial service to the country ; that the bill which he has matured and supported through the House to which he belongs, will be a joyous relief, and a great blessing, to many honest and valuable citizens ; and both useful and safe to the Government. I am happy in seconding here that which he has so well sustained elsewhere ; and am desirous, for one, of expressing my thanks for his zealous devotion to this object, and his successful lead in its accomplishment.

The bill was then ordered to be read a third time.

On the Bill for the Apportionment of Representatives

UNITED STATES SENATE, March 1, 1832.

MR. WEBSTER said this was an important and delicate question for the Senate to act upon ; for it respected the disposition of political power among the States of the Union. It settled the number of Representatives from each State, and the number of electors of President and Vice-President to be assigned to each State. Under our system of government, this was always a delicate question, and to the Senate it presented peculiar difficulties, since it affected States which were here all equally represented. Though it might seem simple to assign members according to numbers, yet, in this case, it was attended with some embarrassment. The ratio assumed by the bill, as it now stands, is forty-seven thousand seven hundred — giving, when applied to the population of the States, two hundred and forty members to the House of Representatives, and leaving fractions considerably large. The additional seven hundred produced no relative effect whatever. It neither augmented nor diminished the number of the House of Representatives, nor affected the number of Representatives of any one State. Forty-seven thousand gives the same number, and from the same States with forty-seven thousand seven hundred. The only effect of the seven hundred was to diminish the apparent amount of unrepresented fractions. He had come to the conclusion that the bill, in its present form, was liable to invincible constitutional obligations ; but, before he considered them, he would draw the attention of the Senate to the inequality of the bill, since it was impossible that any individual should have a Representative : perfect equality of representation was unat-

tainable; but it was the object of Congress to attain to the nearest possible degree of equality. In this matter, equality was justice. This bill, assuming forty-seven thousand seven hundred as a ratio, leaves large fractions in the small States; it leaves large fractions in contiguous States. The three Southwestern States, Louisiana, Alabama, and Mississippi, had very large fractions; New Hampshire, Massachusetts, and Vermont had each a large fraction; New Jersey had a very large fraction. A little comparison will show how unequal the bill is as to these States. Massachusetts, New Hampshire, Vermont, and New Jersey had fifty-one thousand one hundred and eighty persons for each Representative, while New York had a Representative to forty-seven thousand eight hundred inhabitants; New York and Pennsylvania had fractions amounting together to only seventeen thousand. Vermont and New Hampshire, with ten members of Congress, had fractions of seventy-three thousand. A corrected return from the southern district of New York gives to that State five thousand more inhabitants, which diminishes the disparity referred to, *pro tanto*. Massachusetts, Vermont, New Hampshire, and New Jersey had fractions amounting, in the aggregate, to one hundred forty-four thousand one hundred and sixty-eight. Another illustration of the unequal operation of the bill was this. New York had two members more than New England with a population less by forty thousand than that of New England. Six States, with one hundred and ten members, had a fraction of only forty thousand. To those, if you add North Carolina, you have seven States, with a majority of the whole number of members, and a fraction of only fifty-three thousand. Vermont alone had a fraction of forty thousand; New England had a fraction of one hundred and twenty or one hundred and thirty thousand. New Jersey and Vermont, with eleven members of Congress, had a fraction of seventy-five thousand, which was more than the whole unrepresented population of those States whose members constitute a majority of Congress. New England had forty thousand more inhabitants than New York, and New York had two more Representatives than New England. The bill also threw large fractions upon new States — upon Alabama,

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Mississippi, and Louisiana ; which States, before the next census, will be vastly increased in population. In many other statements and views Mr. Webster illustrated the inequality of the bill. He next called the attention of the Senate to the means of remedying this inequality. A just and practicable remedy was to allow Representatives for large fractions. The Constitution prescribed that the Representatives should be apportioned among the several States according to their population, meaning as near as may be. That there should be a precise distribution, was impossible ; but it should be as nearly precise as may be. There was no greater inequality in allowing something more, than in allowing something less than a number which an accurate apportionment would require. We move to seek the greatest attainable degree of equality. It had occurred to him that, throwing aside seven hundred as immaterial to the effect of the ratio, and allowing a Representative for fractions exceeding a moiety of the ratio, would produce greater equality, and do more justice than any other practicable mode. The present bill gives two hundred and forty members. The ratio of forty-seven thousand would also give two hundred and forty members, while each State will send the same number to which forty-seven thousand seven hundred would entitle it. There are fifteen States whose fractions exceed a moiety of the ratio. The amendment fixes the fraction to be represented at twenty-five thousand : of these are fifteen States, whose fractions amount to twenty-five thousand. These are distributed throughout the United States with a respectable degree of equality. There are three in the East : Massachusetts, New Hampshire, and Vermont. Four in the middle States : New York, Pennsylvania, New Jersey, and Delaware. Four in the South : Maryland, Virginia, North and South Carolina. Two in the West : Ohio and Missouri ; and two in the Southwest, Alabama and Louisiana. It leaves unrepresented no fraction greater than sixteen thousand, except that of Maine, which is twenty-three thousand. It is not fair to consider that as a large fraction which falls short of a moiety of the ratio. The recommendation of the amendment was, that the time would come, by the natural operation of events,

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when the old States must consent to part with a considerable portion of their present representation. He confessed that he thought it an object not at present to anticipate this state of things, by depriving any old State of a positive degree of power. He would propose the reduction of the present number until it became necessary. Between the number two hundred and forty and the number two hundred and fifty-five, as the number of the members of the House of Representatives, there was no difference in principle. He had heard many say that the principle of his amendment was just, but that it was liable to some constitutional objections, which had their origin in the message of General Washington, returning the first apportionment bill, in 1792. Mr. Webster had come to the conclusion that the principle was constitutional, if the bill, in its whole frame, was constitutional. The bill of 1792 was rejected, because, instead of apportioning the Representatives among the several States according to a ratio, it assumed a certain number of Representatives, and distributed them among the several States, assigning to each State its number of Representatives, without laying down the rule. Mr. Webster here read the passage, which objected to the bill, that there was no one number, on division, which would yield the number of members in this bill, and that it allotted to eight of the States more than one Representative for every thirty thousand, contrary to an express provision of the Constitution. There was a strong disposition on the part of Congress at that time to increase the number of the House of Representatives. None of the objections urged in the message apply to this amendment. It gives to no State a number of Representatives exceeding one for each thirty thousand. The objection, that there is no one division which will yield the number of members proposed, does not now touch the amendment. General Washington did not mean such a division as would divide the Representative numbers of each State without having any remainder. His objection, he understood, went to the fact that there was no equal ratio applicable to all the States. If the bill had said there should be one member for every forty thousand, and one for every fraction of twenty-five thousand, it would have had a

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ratio which, though complex, was equal in its operation upon all the States. He would defy anybody to find in the rejected bill what General Washington said he could not find—the principle on which the bill was drawn; for it was not there expressed. The number assumed in that bill was probably obtained by dividing the whole representative number by thirty thousand, which dividend was then apportioned among the several States. General Washington's objection went to this extent, and not further, that the bill seemed to apply no uniform principle to all the States, for he could find no division which would mark out the same results. How, then, was the amendment unconstitutional? The Constitution looked to a division as equal as possible, and he believed that the proposition was strictly conformable to the constitutional requirement. He would now make some suggestions which would satisfy the Senate that the bill, in its present form, was unconstitutional. It was a mere mathematical question. The Constitution says that "representatives and direct taxes shall be apportioned among the several States according to their respective numbers." These two hundred and forty members were not apportioned according to the respective numbers of the States. The members from each State should have the same proportion to the whole number of members, as the population of the State bears to the population of the United States. The whole representative population of the United States was 11,923,483. The bill proposes two hundred and forty members. Let us apply the rule to the bill: as the whole population of the United States is to two hundred and forty members, so should the population of New York be to her forty members. But, according to this proportion, New York would be entitled to but thirty-eight members. It is evident that what New York gains, other States must lose. Suppose, instead of two hundred and forty members, it was a tax of two hundred and forty thousand dollars, to be assessed upon the several States; would you put forty thousand dollars on New York, when her fair proportion was only thirty-eight thousand?

Upon Mr. Calhoun's Resolutions

UNITED STATES SENATE, January 28, 1833.¹

MR. WEBSTER then obtained the floor. Nothing, he said, could have been more irregular than the whole of this debate, and he could not avoid the expression of his surprise that the Senators should have gone so far from the question. The question before the Senate was simply as to the time to which the resolution should be postponed, and on this unimportant question gentlemen had shown a disposition to rush at once into the discussion of the general subject. If Senators were disposed to act, as there seemed to be some indications that they would, on a notion of policy, that the first and most effectual mode of injuring a measure was to give it a bad name; that the first principle of attack was to controvert beforehand, and to raise, previous to the discussion of the bill, a cry which might operate on its progress, and afterwards provoke its echo throughout the country, — then they had a right to pursue the course which was thus indicated. But he, as a member of the Committee on the Judiciary, who had reported the bill which was the special order for this day, could not remain silent in his seat while the gentleman from South Carolina charged him with having assisted, and been art and part in making a bill, which he had designated as worse than an abomination — a bill to create a dictator, to establish a military despotism, and the like. He denied that such was the fact, and he proposed, at a proper time, to try conclusions with the gentleman on this point. He wished in

¹ The resolutions may be found in Webster's Collected Works, immediately preceding his speech, "The Constitution not a Compact between Sovereign States."

no degree to avoid such a conflict. Nor did he intend to utter any denunciations against opposition to the bill. Whenever it should become necessary, he would be ready to assign the reasons which had induced him to give his assent to the bill. But he would ask, why was this discussion to be precipitated? Why was it not postponed until the proper time for bringing it on? A bill to create a dictator, to establish a military despotism, reported by one of the standing committees of the Senate, and he a member of that committee! He called on the gentleman from South Carolina to prove the allegations he had made. He called on him to sustain the grave charge which he has thus thrown out in the face of the country.

The gentleman from South Carolina had laid it down, and with an air of sincerity which he did not intend to depreciate, that the resolutions which he had offered contained indubitable facts. Now he (Mr. Webster) disputed these facts, and he would take issue with the gentleman from South Carolina on that point. [Mr. Calhoun. — I will meet it.] He denied that they were facts, and he should be happy to meet the gentleman from South Carolina on that head. But when that gentleman threw out the idea that no one could deny his propositions, he took a very bold ground, and narrowed down the power of denial within very confined limits. To assert such a position was, in fact, a declaration of his own infallibility. The author of *Hudibras* made his hero see truth. He (Mr. Webster) did not pretend to have had this personal acquaintance with truth; but, if to a mind as humble as his, the features of truth were ever exhibited, he was not able to identify them in the propositions of the gentleman from South Carolina. But there would be a proper time to go into this discussion. He wished to see that time arrive, and he was prepared to proceed immediately with the discussion of the bill. Whenever the discussion should come on, he should feel it incumbent on him to show that there was no provision, no principle contained in this bill, which was not in strict conformity with the Constitution, and in harmony with other measures which had been adopted by the Government. And if it were proper on this occasion to use what was called the *argumentum*

ad hominem, he should also be ready to show that there was not a provision contained in this bill, with the exception of part of the first section, which had not, at some time, received the sanction of South Carolina herself. But of that he should have something to say at a proper time. He had risen, intending only to say that these points ought not to be discussed beforehand, and that this bill ought not to be placed in a worse situation than a common criminal. It was the right of the criminal to be heard first, then tried, then judged of. He claimed for this bill that it should be first heard, then tried, and then judged of; and not that it should be judged of without trial or hearing. He repelled the charge that the bill was to create a dictator, to establish a military despotism, and to repeal the Constitution, and crush a sovereign State. This was, indeed, a high-sounding indictment; but he called on the Senate to try it, and not to receive it as proved without a trial.

On the Revenue Collection Bill

UNITED STATES SENATE, February 8, 1833.¹

MR. WEBSTER said he wished to interrupt the course of the debate for a single moment, in order to set one matter right, if he could. Since a warm controversy was rising on this measure, he thought it but proper that we should understand between what parties the controversy existed.

Soon after the declaration of war by the United States against England, an American vessel fell in at sea with one of England, and gave information of the declaration. The English master inquired, with no little warmth of manner and expression, why the United States had gone to war with Eng-

¹ In his message to Congress, December 4, 1832, President Jackson said :

"It is my painful duty to state, that, in one quarter of the United States, opposition to the revenue laws has risen to a height which threatens to thwart their execution, if not to endanger the integrity of the Union. Whatever obstructions may be thrown in the way of the judicial authorities of the General Government, it is hoped they will be able peaceably to overcome them by the prudence of their own officers and the patriotism of the people. But should this reasonable reliance on the moderation and good sense of all portions of our fellow citizens be disappointed, it is believed that the laws themselves are fully adequate to the suppression of such attempts as may be immediately made. Should the exigency arise, rendering the execution of the existing laws impracticable from any cause whatever, prompt notice of it will be given to Congress, with the suggestion of such views and measures as may be deemed necessary to meet it."

On the 16th of January following, the President sent another message to Congress, transmitted copies of his proclamation and proceedings in relation to South Carolina, and made suggestions as to legislation needed to meet the emergency which had arisen. The message was referred to the Judiciary Committee, and on January 28 Mr. Wilkins, a Senator from Pennsylvania, reported to the Senate the Revenue Collection Bill, otherwise known as "The Force Bill." Although an administration measure, Mr. Webster supported the bill, and made the remarks here printed.

land? The American answered him, that difficulties had existed, for a good while, between the two governments, and that it was at length thought, in America, to be high time for the parties to come to a better understanding.

I incline to think, Mr. President, that a war has broken out here which is very likely, before it closes, to bring the parties to a better understanding. But who are the parties? Will you please to remember, sir, that this is a measure founded in Executive recommendation? The President, charged by the Constitution with the duty of executing the laws, has sent us a message, alleging that powerful combinations are forming to resist their execution; that the existing laws are not sufficient to meet the crisis; and recommending sundry enactments as necessary for the occasion. The message being referred to the Judiciary Committee, that committee has reported a bill in compliance with the President's recommendation. It has not gone beyond the message. Everything in the bill, every single provision which is now complained of, is in the message. Yet the whole war is raised against the bill, and against the committee, as if the committee had originated the whole matter. Gentlemen get up and address us, as if they were arguing against some measure of a factious opposition. They look the same way, sir, and speak with the same vehemence, as they used to do when they raised their patriotic voices against what they called a "coalition."

Now, sir, let it be known, once for all, that this is an administration measure; that it is the President's own measure; and I pray gentlemen to have the goodness, if they call it hard names, and talk loudly against its friends, not to overlook its source. Let them attack it, if they choose to attack it, in its origin.

Let it be known, also, that a majority of the committee reporting the bill are friends and supporters of the administration; and that it is maintained in this House by those who are among his steadfast friends, of long standing.

It is, sir, as I have already said, the President's own measure. Let those who oppose it, oppose it as such. Let them fairly acknowledge its origin, and meet it accordingly.

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The honorable member from Kentucky (Mr. Bibb), who spoke first against the bill, said he found in it another Jersey prison ship; let him state, then, that the President has sent a message to Congress, recommending a renewal of the sufferings and horrors of the Jersey prison ship. He says, too, that the bill snuffs of the alien and sedition law. But the bill is fragrant of no flower except the same which perfumes the message. Let him, then, say, if he thinks so, that General Jackson advises a revival of the principles of the alien and sedition laws.

The honorable member from Virginia (Mr. Tyler) finds a resemblance between this bill and the Boston port bill. Sir, if one of these be imitated from the other, the imitation is the President's. The bill makes the President, he says, sole judge of the Constitution. Does he mean to say that the President has recommended a measure which is to make him sole judge of the Constitution? The bill, he declares, sacrifices everything to arbitrary power — he will lend no aid to its passage — he would rather “be a dog, and bay the moon, than such a Roman.” He did not say “the old Roman.” Yet the gentleman well knows, that if anything is sacrificed to arbitrary power, the sacrifice had been demanded by the “old Roman” as he and others have called him; by the President whom he has supported, so often and so ably, for the chief magistracy of the country. He says, too, that one of the sections is an English Botany Bay law, except that it is much worse. This section, sir, whatever it may be, is just what the President's message recommended. Similar observations are applicable to the remarks of both the honorable gentlemen from North Carolina (Mr. Brown and Mr. Mangum). It is not necessary to particularize those remarks. They were in the same strain.

Therefore, sir, let it be understood, let it be known, that the war which these gentlemen choose to wage, is waged against the measures of the administration, against the President of their own choice. The controversy has arisen between him and them, and in its progress they will probably come to a distinct understanding.

Mr. President, I am not to be understood as admitting that

these charges against the bill are just, or that they would be just if made against the message. On the contrary, I think them wholly unjust. No one of them, in my opinion, can be made good. I think the bill, or some similar measure, had become indispensable, and that the President could not do otherwise than to recommend it to the consideration of Congress. He was not at liberty to look on and be silent, while dangers threatened the Union, which existing laws were not competent, in his judgment, to avert.

Mr. President, I take this occasion to say, that I support this measure, as an independent member of the Senate, in the discharge of the dictates of my own conscience. I am no man's leader; and, on the other hand, I follow no lead, but that of public duty, and the star of the Constitution. I believe the country is in considerable danger; I believe an unlawful combination threatens the integrity of the Union. I believe the crisis calls for a mild, temperate, forbearing, but inflexibly firm execution of the laws. And, under this conviction, I give a hearty support to the Administration, in all measures which I deem to be fair, just, and necessary. And in supporting these measures, I mean to take my fair share of responsibility, to support them frankly and fairly, without reflections on the past, and without mixing other topics in their discussion.

Mr. President, I think I understand the sentiment of the country on this subject. I think public opinion sets with an irresistible force in favor of the Union, in favor of the measures recommended by the President, and against the new doctrines which threaten the dissolution of the Union. I think the people of the United States demand of us, who are intrusted with the government, to maintain that government; to be just, and fear not; to make all and suitable provisions for the execution of the laws, and to sustain the Union and the Constitution against whatsoever may endanger them. For one, I obey this public voice; I comply with this demand of the people. I support the Administration in measures which I believe to be necessary; and, while pursuing this course, I look unhesitatingly, and with the utmost confidence, for the approbation of the country.

On the Modification of the Tariff proposed by Mr. Clay

UNITED STATES SENATE, February 12, 1833.¹

MR. WEBSTER said, that as, by its title, the bill appeared to be merely a bill to modify the existing revenue laws, it could hardly be rejected as a bill for raising revenue, which ought to originate in the other House, since there are many particulars in which all the existing revenue laws might be modified, without raising more or less revenue. As the bill has not been read (said Mr. Webster), we seem to know no more of it, regularly, than its title purports. That title describes a bill which may constitutionally originate in the Senate: I shall, therefore, vote for the leave.

But I feel it my duty, Mr. President, to say a word or two upon the measure itself. It is impossible that this proposition of the honorable member from Kentucky should not excite in the country a very strong sensation, and, in the relation in which I stand to the subject, I am anxious, at an early moment, to say, that as far as I understand the bill, from the gentleman's statement of it, there are principles in it to which I do not at present see how I can ever concur. If I understand the plan, the result of it will be a well-understood surrender of the power of discrimination, or a stipulation not to use that power, in the laying duties on imports, after the eight or nine years have expired. This appears to me to be

¹ On the 12th of February, 1833, while the "Force Bill" was still before the Senate, Mr. Clay rose and submitted a Compromise Bill for the modification of the Tariff. Mr. Webster could not support the measure, and announced that he would offer resolutions on the following day.

matter of great moment. I hesitate to be a party to any such stipulation. The honorable member admits, that though there will be no positive surrender of the power, there will be a stipulation not to exercise it; a treaty of peace and amity, as he says, which no American statesman can, hereafter, stand up to violate. For one, sir, I am not ready to enter into the treaty. I propose, so far as depends on me, to leave all our successors in Congress as free to act as we are ourselves.

The honorable member from Kentucky says the tariff is in imminent danger; that, if not destroyed this session, it cannot hope to survive the next. This may be so, sir. This may be so. But if it be so, it is because the American people will not sanction the tariff; and if they will not, why, then, sir, it cannot be sustained at all. I am not quite so despairing as the honorable member seems to be. I know nothing which has happened, within the last six or eight months, changing, so materially, the prospects of the tariff. I do not despair of the success of an appeal to the American people, to take a just care of their own interests, and not to sacrifice those vast interests which have grown up under the laws of Congress.

But, sir, out of respect to the economy of the time of the Senate, I will pursue these remarks no farther at present; but will take an opportunity, to-morrow, to lay on the table resolutions expressing my general opinions on this interesting subject.

On the next day Mr. Webster rose, and stated that in pursuance of the notice which he had given yesterday, he wished now to lay on the table some resolutions, expressive of his opinions on the important subjects in relation to which a bill was presented to the Senate yesterday. He would now send the resolutions to the table, and request that they might be read. They would then come up for consideration to-morrow, when he should take an opportunity to make a short explanation of his views of them.

The resolutions were then read, as follows :

“Resolved, That the annual revenues of the country ought not to be allowed to exceed a just estimate of the wants of the Government; and that as soon as it shall be ascertained, with reason-

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able certainty, that the rates of duties on imports, as established by the act of July, 1832, will yield an excess over those wants, provision ought to be made for their reduction ; and that, in making this reduction, just regard should be had to the various interests and opinions of different parts of the country, so as most effectually to preserve the integrity and harmony of the Union, and to provide for the common defence, and promote the general welfare of the whole.

“ But, whereas it is certain that the diminution of the rates of duties on some articles would increase, instead of reducing, the aggregate amount of revenue on such articles ; and whereas, in regard to such articles as it has been the policy of the country to protect, a slight reduction on one might produce essential injury, and even distress, to large classes of the community, while another might bear a larger reduction without any such consequences ; and whereas, also, there are many articles the duties on which might be reduced, or altogether abolished, without producing any other effect than the reduction of revenue : Therefore,

“ *Resolved*, That, in reducing the rates of duties imposed on imports by the act of the 14th of July aforesaid, it is not wise or judicious to proceed by way of an equal reduction per centum on all articles ; but that as well the amount as the time of reduction ought to be fixed, in respect to the several articles distinctly, having due regard, in each case, to the questions whether the proposed reduction will affect revenue alone, or how far it will operate injuriously on those domestic manufactures hitherto protected ; especially such as are essential in time of war, and such, also, as have been established on the faith of existing laws ; and, above all, how far such proposed reduction will affect the rates of wages and the earnings of American manual labor.

“ *Resolved*, That it is unwise and injudicious, in regulating imports, to adopt a plan, hitherto equally unknown in the history of this government, and in the practice of all enlightened nations, which shall, either immediately or prospectively, reject all discrimination on articles to be taxed, whether they be articles of necessity or of luxury, of general consumption or of limited consumption ; and whether they be, or be not, such as are manufactured and produced at home ; and which shall confine all duties to one equal rate per centum on all articles.

“ *Resolved*, That since the people of the United States have deprived the State governments of all power of fostering manufac-

tures, however indispensable in peace or in war, or however important to national independence, by commercial regulations, or by laying duties on imports, and have transferred the whole authority to make such regulations, and to lay such duties, to the Congress of the United States, Congress cannot surrender or abandon such power, compatibly with its constitutional duty, and therefore,

“Resolved, That no law ought to be passed on the subject of imposts, containing any stipulation, express or implied, or giving any pledge or assurance, direct or indirect, which shall tend to restrain Congress from the full exercise, at all times hereafter, of all its constitutional powers, in giving reasonable protection to American industry, countervailing the policy of foreign nations, and maintaining the substantial independence of the United States.”

Remarks on the Tariff

UNITED STATES SENATE, February 25, 1833.¹

MR. WEBSTER rose to express his sentiments in opposition to the bill. He paid, in the commencement, a tribute to the purity, zeal, and ability of the Senator from Kentucky, for whom he had so long entertained a high respect, and to elevate whom to a situation where his talents might be still more beneficial to his country he had zealously labored. He also complimented the talents and services of the Senator from South Carolina, with whom he had so often acted, and for whom he had always felt a sincere regard. He briefly reviewed his own course, when the former bills on the subject of the tariff were under consideration, and the conviction which was forced on the East, and other portions of the country, that the protective system was to be the settled policy of the Government. New England had resisted, in the first instance, the establishment of a high protective policy; but when that was determined on, the Eastern States turned all their natural advantages, and their capital of wealth and industry, into the new channel thus marked out for them. The bill of 1826 was to carry out the promises made by the bill of 1824. He disliked the bill of 1828, yet he had voted for it on account of that feature in it which gave the woollens the protection which the Government had pledged itself to give by the law of 1824. That bill decided the policy of the country, unless it was to be kept in a state of perpetual fluctuation and uncertainty.

After passing the law of last session, a law containing some

¹ Mr. Clay's Compromise Bill being read a third time, and the question being on its passage, Mr. Webster addressed the Senate upon the measure.

features of concession and compromise, when the country was not prepared for any change, the present bill, professing to be a bill of peace, of arrangement, and of compromise, is brought forward by the distinguished Senator from Kentucky, who professes to have renounced none of his former opinions as to the constitutionality and expediency of protection. The bill is also supported by a gentleman whose opinions are directly the reverse of those entertained by the Senator from Kentucky. When it was supported by such opposite feelings, it was important to look into the provisions of the bill. He stated the various considerations which ought to weigh with those who, as friends of the protective system, voted for this bill.

He did not object to the prospective and biennial reductions made by the bill up to 1841, but he objected to the clauses which did, in effect, prohibit the repealing action of any subsequent Congress upon this bill, until 1842. He also objected to the proviso in the fifth section, which was a restriction on the power of Congress. He put it to the Senator from Tennessee (Mr. Grundy), who had introduced the clause, to say if he did not intend that it should show that Congress was to be considered as bound by the bill, as far as this Congress could bind the future legislation of the country.

The protected articles may, by this bill, be reduced below twenty per cent *ad valorem*, but cannot be raised above twenty per cent.

He opposed the bill because it imposed a restriction on the future legislation of Congress. He also opposed it because it seemed to yield the constitutional power of protection. Various arguments were advanced by him to show that the Southern politicians would, if this bill were passed, tell every one of their constituents that they had gained some concession to the opinions of the South. He said that he approved the sagacious silence of the Southern gentlemen. They would not suffer themselves to be provoked by friend or enemy to speak before the time should come when they ought to speak. They were masters of the game, and they knew it. He commended their policy, but he wished them to see that he understood it. In giving up specific duties, and substituting *ad valorem*, the bill

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had abandoned the policy of all wise Governments, and the policy of our own Government, and the policy always advocated by the Senator from Kentucky. He viewed the bill as a surrender of all the interests of the smaller capitalists, and a concession in favor of overgrown monopolists. He pointed out the effects of this surrender on our own condition, and the handle which it would give to satirists, and foreign writers, and the poets laureate of all the monarchies of Europe, to turn our institutions and our pretensions into ridicule. If this principle were carried into our navigation, he stated that it would be immediately countervailed by Great Britain. By limiting our countervailing power, and leaving the countervailing power of Europe free, we put in her hands weapons to destroy us, and cast our weapons of defence at her feet. Under a colonial system, our manufactures would not be more completely shackled than they will be by this bill.

He referred to the four expedients by which the Senator from Kentucky had said that our protective system could be preserved: 1st, Prohibition; 2d, The free list; 3d, Incidental protection; all of which would be found inadequate; and the 4th, Discrimination, or specific duties, was the only one which would avail. Discriminating and specific duties were the last resource, and if that were to be given up, there could be no longer any hope for the protective system, in war or in peace. He insisted, that not being owners of the property, but merely agents or administrators, we had no right to fetter a future Congress. He regarded this bill as the last will and testament of this Congress, which would be set aside by the people, but not on the ground of want of sanity in those principally engaged in making it, for he never saw gentlemen more fully in possession of that sagacity; nor on account of any undue influence, although he could not help thinking that panic had something to do with it, and that if the South Carolina ordinance and replevin law had not appeared, this bill would never have appeared in the Senate.

In reference to the practical effect of the bill, he stated that he saw obstacles to carrying this bill into effect, which appeared to him to be insurmountable. He thought that it

would be difficult to ascertain the legal value of cotton. He took a view of the different values attached to cotton, and of the professional constructions to which the clause concerning cotton would be subjected. In relation to iron, also, he thought that the difficulties in ascertaining the value would be such as to render the provision concerning that article inoperative. The duties on iron having hitherto been specific, no principle of valuation had been laid down. He considered that there was no legislative provision by which the value of iron could be assessed. The same remarks were applicable to sugar ; and he stated a case to show the difficulty which exists in reaching a proper and fixed value as a basis for duty. He supposed the answer would be, that if difficulties arise, the Secretary must get through them as well as he can ; and if he cannot, he must come to Congress.

As a measure of finance, he had no idea that the bill would be an efficient measure. He had not heard the assertion that the bill would at all reduce the revenue. He denied that the reduction of duties on boots, and shoes, and clothing would reduce the revenue. The bill would, in these branches, reduce thousands of mechanics to ruin, and by this operation would increase the revenue. In this point, the bill aims a deadly blow on the poor, the young, the enterprising — on the labor and the ingenuity of the country. By the introduction of foreign alcohol, at a reduced rate of duty, the revenue would be increased ; but he thought gentlemen should pause before they sanctioned this change. The entire breaking up of the printing establishments for printing calicoes would be one of the consequences of the passage of the bill ; and in proof he read some extracts from a memorial of the Lowell manufacturers. These institutions might survive the first three reductions, but the fourth would be fatal to them. On the spinning and weaving, the effect, if not so disastrous, would scarcely be less objectionable. The large capitalists in that branch would be able to make money by breaking down all young and enterprising establishments. In reference to woollens, with a duty of twenty per cent on woollens, and twenty per cent on wool, it is impossible that they can stand. The depreciation

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of property would be the first consequence, and the depreciation of credit the next; and, by the surrender of their interests, long before this beneficent home valuation can come to their relief, their eyes will be sealed in death. As to iron, English or Welsh iron costs twenty-six dollars a ton, and the supply is inexhaustible. Iron in Russia and Sweden costs forty dollars a ton. English iron has been taxed thirty dollars, and Baltic iron eighteen dollars a ton. The change from specific to ad valorem duty will work an injurious change. He believed that this surrender once made, we could never return to the present state of things, without such a struggle as would shake the country much more than anything has yet shaken it.

He might be wrong. There might be no pledge, no constitutional objection; but, if so, why this bill? The people will not expect the passage of this bill. There was no expectation at the commencement of this short session that such a bill would be passed. The Senate had not had time to know the pleasure of their masters. No opportunity had been offered for obtaining a knowledge either of the course of public opinion, or the effect of this measure on the public interests. It was said the next Congress would pass this bill if it were not passed now. He did not fear the next Congress; but if that body should choose to undo what was now done, it would have the power so to do.

If it was true, as the Senator from Kentucky believed, that the intention of South Carolina was merely to enter into a lawsuit with the United States, then there was no necessity for this sacrifice of great interests. He believed that if this bill should become a law, there will be an action on the part of the people at the next session to overthrow it. It will not be all requiem and lullaby when this bill shall be passed. On the contrary, he believed there would be discord and discontent. He had already expressed his views as to reduction in his resolutions. He believed there ought to be a reduction to the point of necessary revenue; and that, as soon as that point could be ascertained, any Congress would be able to make a tariff which would suit the country. The estimates of the Secretary of the Treasury, as to the point of revenue, vary

materially from those of others ; but if the true point could be ascertained, he thought Congress might at once proceed to an adjustment of the tariff with a prospect of success.

As he had commenced with doing justice to the motives of the gentlemen on the other side, he asked that equal justice might be done to him in the opposition which he was compelled to make to a measure which had been ushered in with so much profession of peace and harmony. He would do as much to satisfy South Carolina as any man. He would take this tariff, and cut it down to the bone ; but he did not wish to rush into untried systems. He believed that his constituents would excuse him for surrendering their interests, but they would not forgive him for a violation of the Constitution.

Upon Mr. Calhoun's Resolutions

UNITED STATES SENATE, February 26, 1833.

MR. WEBSTER said, that having already occupied so much of the time of the Senate on the general subject, he should not do more than to make a very few observations, in reply to what the honorable member from South Carolina had now advanced. The gentleman, said Mr. Webster, does me injustice, in suggesting the possibility that any remarks of mine could have been made for the purpose of obtaining favor, in any quarter, by an appearance of hostility to him.

Mr. Calhoun rose and said, he had only suggested it as a matter of possibility.

I hope it is not even possible, continued Mr. Webster, that my support or opposition of important measures should be influenced by considerations of that kind. Between the honorable member and myself, personal relations have always been friendly. We came into Congress, now near twenty years ago, both ardent young men; and however widely we may have differed at any time on political subjects, our private intercourse has been one of amity and kindness.

Mr. Calhoun rose and said, these remarks were just such as he himself had intended to make.

The honorable member considers my remarks on his use of the phrase "constitutional compact" as not well founded, and says he has my own authority against myself. He quotes from my speech in 1830. But I did not, on that or any occasion, call the Constitution a constitutional compact. In the passage to which he refers, I was speaking of one part of

the agreement on which the Constitution was founded ; namely, the agreement that the slave-holding States should possess more than an equal proportion of Representatives. That, I observed, was matter of compact, sanctioned by the Constitution ; it was an agreement, which, being adopted in the Constitution, may be well enough called a constitutional compact ; but that is not equivalent to saying that the Constitution of the United States is nothing but a constitutional compact between sovereign States. The gentleman must certainly remember that my main object, on that occasion, was to establish the proposition, stated in the same speech, that the Constitution was *not a compact between States*, but a constitution, established by the people, with a government founded on popular election, and directly responsible to the people themselves.

The honorable gentleman attempts also to find an authority for his use of the word *accede*. He says the same word was used by General Washington, in speaking of the adoption of the Constitution by North Carolina. It was so ; and it is used by the biographer of Washington, also, in reference to the same occurrence ; and although both, probably, adopted the phrase from the popular language of the day, yet the language in that case was not, perhaps, improper. By the adoption of the Constitution by nine States, the old confederacy was effectually dissolved. North Carolina not having adopted it until after the government went into operation, was out of the Union. She had, at that moment, no distinct connection with other States. The old Union was broken up, and she had not come into the new. There was propriety, therefore, perhaps, in calling her adoption of the Constitution an accession. Yet, when she afterwards adopted the Constitution, she used the same terms of ratification as the other States. *Accede* is unknown to all those ratifications, and to the Constitution itself. But the honorable gentleman insists that he can change the phraseology of his resolutions, so as to avoid my objections, and yet maintain their substantial sense and import.

He says his first resolution may stand thus :

“ *Resolved*, That the people of the several States composing these United States are united as parties to a compact, under the

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title of the Constitution of the United States, which the people of each State ratified as a separate and sovereign community, each binding itself by its own particular ratification; and that the Union, of which the said compact is the bond, is a union *between* the States ratifying the same."

This is a change, it is true, but it is a mere verbal change. It rejects certain words, but adopts their exact synonyms. In his resolution, he calls the Constitution a "constitutional compact;" in the amended form which he now suggests, he calls it a "compact, under the title of a constitution."

These are just the same thing. Both call it a compact, and a compact between sovereign communities; and in both the attempt is to make the Constitution not one substantive thing, but merely the qualification of something else. Now, sir, the Constitution does not call itself a compact of any kind; the people did not call it such when they ratified it. No State said, "We, as a sovereign community, accede to a constitutional compact;" or, "We, as a sovereign community, ratify a compact under the title of a constitution." No State said one word about *compact* — no State said one word about acting *as a sovereign community*. On the contrary, in each and in every State the language is, that the conventions, in the name and by the authority of the people, *ratify this constitution, or frame of government*. Neither the resolution, therefore, of the honorable member, nor this amended form of it, follows the official and authentic language applied to the transaction to which it refers. I again say, if he will follow that language, if he will state accurately what was done, and then state his proposed inference, that inference will be out of all sight from his premises. Let him say nothing of *compact*, because the people said nothing of it; let him not assert that the people of the States acted as *sovereign communities*, because they have not said so. Let him describe what the people did, *in their own language*. It will then stand, that *the people ratified this constitution, or frame of government*. Now, sir, the mere substitution of this just and true phraseology strikes away the whole foundation of the gentleman's argument. He cannot

stand a moment, except on the ground of a *compact between sovereign communities*. Compact, therefore, and such a compact, must keep its place in his first resolution, or else his chain of reasoning breaks in the first link. He is, therefore, driven to the necessity of assuming what cannot be proved, and of giving a history of the formation of this Constitution essentially different from its true history. He is compelled to reject the language of the Constitution itself, and to reject also the language used by the people of every one of the States when they adopted it, and to lay the corner-stone of his whole argument on mere assumption.

The honorable gentleman does not understand how the Constitution can have a compact, or consent, for its basis, and yet not be a compact between sovereign States. It appears to me, the distinction is broad and plain enough. The people may agree to form a government; this is assent, consent, or compact; this is the social compact of the European writers. When the government is formed, it rests on this assent of the governed; that is, it rests on the assent of the people. The whole error of the gentleman's argument arises from the notion that the people, of their own authority, can make but one government; or that the people of all the States have not united, and cannot unite, in establishing a constitution, connecting them together, directly, as individuals, united under one government. He seems unwilling to admit, that while the people of a single State may unite together, and form a government for some purposes, the people of all the States may also unite together, and form another government, for other purposes. But what he will not thus admit, appears to me to be the simple truth, the plain matter of fact, in regard to our political institutions.

The honorable gentleman thinks, sir, that I overlooked a very important part of the Constitution favorable to his side of the question. He says it is declared, in the seventh article, that the ratification of the convention of nine States shall be sufficient for the establishment of the Constitution *between the States ratifying the same*. If I have overlooked this provision, sir, it is because it appears to me not to have that bear-

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ing on the question which the honorable member supposes. The honorable member has said, in one of his publications, that the word "States," as used in the Constitution, sometimes means the States in their corporate capacities, or governments; sometimes it means their territory, merely; and sometimes it means *the people of the States*. This is very true; and it is perfectly clear, that, in the clause quoted, the word means *the people of the States*. The same clause speaks of the *conventions of the States*; that evidently means conventions of *the people* of the States, else the whole provision would be absurd. All that this part of the Constitution intended was simply to declare, that so soon as the people of nine States should adopt and ratify it, it should, as to these States, go into operation.

The gentleman has concluded, sir, by declaring, again, that the contest is between power on one side, and liberty on the other—and that he is for liberty. All this is easily said. But what is that liberty whose cause he espouses? It is liberty, given to a part, to govern the whole. It is liberty, claimed by a small minority, to govern and control the great majority. And what is the power which he resists? It is the general power of the popular will; it is the power of all the people, exercised by majorities, in the Houses of the Legislature, in the form in which all free governments exercise power.

Mr. President, turn this question over, and present it as we will, argue upon it as we may, exhaust upon it all the fountains of metaphysics, stretch over it all the meshes of logical or political subtlety, it still comes to this: Shall we have a general government? shall we continue the union of the States under a *government* instead of a *league*? This is the upshot of the whole matter; because, if we are to have a government, that government must act like other governments, by majorities; it must have this power, like other governments, of enforcing its own laws, and its own decisions; clothed with authority by the people, and always responsible to the people, it must be able to hold on its course, unchecked by external interposition. According to the gentleman's view of the matter, the Constitution is a league; according to mine,

it is a regular popular government. This vital and all-important question the people will decide, and, in deciding it, they will determine whether by ratifying the present CONSTITUTION AND FRAME OF GOVERNMENT they meant to do nothing more than to amend the articles of the old confederation.

Remarks on Steamboat Accidents

UNITED STATES SENATE, December 23, 1833.¹

MR. WEBSTER addressed the Senate. It was, he believed, the general expectation of the country that Congress would take up the subject to which this resolution referred. The history of the last two or three years, said Mr. Webster, exhibits a vast amount of property and a startling list of human lives, lost by the explosion of the boilers and flues of steamboats. These frequent occurrences have occasioned the existence of so much fear and terror, as to be a serious diminution of the convenience and comfort of that mode of conveyance. At present the whole subject is without any regulation whatever by public authority, and no authority but that of Congress seems competent to establish proper regulations. Of the power of Congress there can be no doubt. Steamboats are, generally, licensed vessels, and they engage extensively in the coastwise commerce of the country. They may be registered vessels also, and may engage in its foreign commerce. On the same ground that laws of Congress regulate the number of passengers in merchant vessels, and make it necessary that such vessels should have medicine chests for the preservation of the lives and health of persons on board, with divers other provisions for the same or similar objects, it is plainly in the power of Congress to adopt any regulations for the government of steam vessels, which security to life and property may appear to require. It is with

¹ This speech was on the following resolution, offered by Mr. Webster on December 19:

“*Resolved*, That the Committee on Naval Affairs be instructed to inquire into the expediency of passing a law for preventing, as far as may be, accidents to vessels employed on the foreign or coastwise commerce of the United States, from explosions by steam.”

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Congress to make these regulations, or they cannot be effectually made at all.

It is the general opinion, I believe, not only of practical engineers, but of the public also, that nearly all these accidents have arisen from negligence, and some of them from a very highly criminal degree of negligence. Indeed, it may be well doubted whether a still more positive criminal offence has not, in some instances, occasioned the disaster. Steamboat racing, for example, a practice by which the lives of hundreds of persons are put into imminent danger, without the slightest knowledge, on their part, of the existence of any such cause of danger, is such a wanton, intentional, and reckless exposure of human life, that it may well be regarded as a higher offence than even extreme negligence. But negligence itself is criminal, highly criminal, where such effects to life and property follow from it. Those who carry passengers for hire, by means of such a mighty agent as steam — an agent so useful and powerful when kept under proper management, and so destructive when it is allowed to overcome its just restraints — are bound in duty, and should be bound by law, to apply to their business the strictest attention, and the utmost degree of diligence.

I am not prepared to say, definitely, what legal provisions it may be proper to adopt. It will be the business of the committee to consider and arrange such provisions. They will have the benefit of the legislation of other countries on the same subject, and may readily command the assistance of whatever skill and experience our own country affords, in aid of their labors.

Some general ideas upon the proper remedy, however, have occurred to me, which I will suggest for consideration.

The law, as it seems to me, might be of a twofold character. It might prescribe certain regulations, the violation of which, whether accidents happen in consequence or not, should incur a penalty; and it might further provide, that, in case of accident, although all prescribed regulations should have been previously complied with, yet, if the accident happened from culpable negligence at the moment, that negligence should be

severely punished. As to previous and prescribed regulations, the first and most important, doubtless, should be, that every boiler intended for a steamboat should be tried and proved by some public authority, and restrained, in its future use, to one-third, or at most one-half, the degree of pressure or tension which it should have been proved to be capable of bearing. A safety valve, out of the reach of the firemen, a proper apparatus to show at all times the level of the water, and also the intensity or height of the steam, and this apparatus so arranged that its indications may be seen from without, are among the preventive remedies to which the attention of the committee will probably be called.

But I look with more confidence of beneficial results from certain other provisions, which I trust will receive the consideration of the committee. Fully believing that these accidents generally result from negligence, at the time, by those who have the charge of the engine, penalties, I think, ought to be enacted against such negligence, and legal means provided, by which when lives are lost by such occurrences, an immediate inquisition, investigation, and trial should be secured, and the culpable negligence, if there be such, adequately punished. And, in the first place, I think the boat itself should be made subject to forfeiture, whenever lives were lost through the negligence of those conducting it. There is nothing unreasonable in this; analogous provisions exist in other cases. The master of a merchant ship, for instance, may forfeit the ship by a violation of law, however innocent the owners may be, even though that law be only a common regulation of trade and customs. There is at least quite as much reason for saying that whoever builds or buys a steamboat, and proposes to carry passengers therein for hire, shall be answerable to the amount of the value of the boat, for the sobriety, diligence, and attention of those whom he appoints his agents to navigate it, as there is, in revenue cases, to impose such liability for smuggling, or illegal landing of goods. To enforce this liability, I should propose, that whenever an explosion takes place, causing the loss of the lives of passengers, the boat should be immediately seized by the collector of the district, and the persons

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navigating her detained for examination; a trial should be had, and unless it should appear on such trial that all legal requirements had been previously complied with and were observed at the time, and further, that the accident was one which no degree of attention could have foreseen or prevented, the boat should be forfeited and the persons having charge at the time should be punished. It is no unreasonable hardship, in such cases, to throw the burden of proof on those who are intrusted with the navigation and management of the boat. They should be able to make out a clear case of actual attention, skill, and vigilance, or else forfeiture ought to follow. It is a very high trust to have charge of that which is so potent to destroy life, and which, when negligently treated, is so likely to destroy it. Of course, all unnecessary delay, expense, or trouble should be avoided. The property seized might be restored, on bonds, as in other cases of seizure, pending preparation and trial; and every indulgence allowed, in the forms and modes of proceeding, compatible with the great end of an immediate investigation and a prompt decision.

It is evident that, for many reasons, a judicial investigation will seldom be had, in these cases, unless it be instituted by public authority; and I do not think any provisions will be adequate which do not secure such investigation, whenever the loss of life happens.

As to steamboat racing, it is an enormity that demands no tolerance. Doubtless, the committee will see the propriety of providing that all such racing, on any wager, or for any stakes, whether it be between boat and boat, both or either having passengers on board, or whether the wager be on any boat, with passengers on board, running against time, shall be punished with forfeiture of the boat, and severe personal penalties on those concerned, whether any accident happen from such racing or not.

This, sir, is a rough sketch of those enactments which, I think, may deserve the consideration of the committee. Others, and perhaps better than these, will doubtless occur to the members of the committee. I have the fullest confidence that it is in the power of Congress to put an end, in a very great degree, to these

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disastrous occurrences. I believe that a wise and efficient law, such as may be easily framed and put in practice, would prevent three-fourths of them. At any rate, I trust we shall meet the public expectation, and try the experiment.

There are, sir, one or two other subjects belonging to the safe navigation of steamboats, though not immediately connected with the explosion of steam, which the committee will probably think worthy of attention. The first is, the collision of these vessels. It has happened more than once that steamboats have run foul of each other, not by means of darkness, or fog, but simply because the one did not know on which side the other meant to pass. Something like a law of the road, by which each should know on which hand to keep her course, with the obligation of being well lighted at night, would probably prevent some of these occurrences.

The other subject is the carrying of gunpowder in large quantities, in boats having passengers. As there are boats used exclusively for freight, there can hardly be a necessity of transporting gunpowder in passenger boats. This transportation in such boats augments the danger, and, when known, still more augments the terror of the passengers. And it is probably in consequence of this, and because some captains on that account are not willing to receive gunpowder on board, that the article is sometimes shipped in disguise, the boxes being marked as containing other goods. This highly objectionable and criminal practice ought to be severely punished.

On the New York Memorial upon Removal of Deposits

UNITED STATES SENATE, February 4, 1834.

MR. WEBSTER rose and said, that the great number of the signers of this memorial, and the just testimony which had been borne to the character and respectability of those who had affixed their names to it, might be received as full testimony of the great degree of public distress which prevails at this moment. In the course of twenty years' experience in Congress he had seen no such memorial. He had his doubts if, in the whole history of our Government, any memorial had ever been presented in which such pains had been taken to give a respectful and an emphatic expression of the deep, widespread, and earnest conviction of public suffering, as were exhibited in this memorial. It reminded him more of some instances which had occurred in a government in Europe, which was, in some degree, a popular one, but less so than our own, having its representatives real and nominal, but not springing so directly from the people as under our institutions; he meant in the British House of Commons, where, under a less auspicious organization than happily existed now, a great mass of petitions, with a prodigious number of signatures, was presented. Gentlemen know how the tables of the House of Commons were loaded with these petitions at the commencement of the American war. There was presented a memorial from one of the northern counties, by a whig member, against the American contest, and when the messenger brought one end of it to the clerk's table, the other end was not to be seen. A member remarked that there was the head

of the petition, but where was the tail? It was answered, that the tail had not yet left Yorkshire.

The proofs of public distress which were now exhibited were of too earnest a character to be scoffed at, and too plain to be mistaken. The suffering pressed so hard upon the people, that they scarcely could find terms adequate to its expression; they could hardly dare to trust their lips to utter the results of their convictions. This was the present state of things. A great degree of public distress existed, and the cause of that distress was now to be investigated. It had been contended, on one side, that the cause was to be found in the removal of the deposits and the breaking up of the United States Bank. On the other hand, it was asserted that it was all attributable to the conduct of the bank itself, which, notwithstanding the attempts made to put it down, and the obloquy with which it was assailed, being in possession of the means of relieving the existing distress, ought to have applied its funds for the purpose of affording such relief. He deemed it of great importance that in the existing circumstances of the country the bank should do what it could, and should convince the people that it extended all the relief in its power to yield. It was its duty to exert its power to the verge of its own safety, for the purpose of assisting the property and industry of the country to sustain itself under this unprecedented weight of distress. He trusted that the bank would do so; it ought to do it; it was its duty to do it.

But it was necessary that it should keep in view the circumstances of its own situation, that its charter had only two years to run, and that anything like an instantaneous collection of its debts would be impossible, without pressing the industry of the country to ruin. Its only course, therefore, was that which was dictated by strict prudence, and that it ought, under that dictation, to give effect, to the full extent of its power, to the earnest solicitude which he believed that it felt to relieve the country. But, on the other hand, the rule of prudence required that it should have constant regard to its own safety, and to the necessity which existed for winding up its affairs within the time prescribed by law. The Government had

taken its stand, and declared its purpose to be the collection and distribution of its revenue by means of the State banks alone; it had held out the idea that this scheme would be successful, and had pledged itself to carry it through; still he trusted that the bank would discharge its duty, afford evidence that there was no fault in its conduct, and prove that, while a charter remained to it, it would relieve the public distress, as far as it could do so with safety; and beyond the line of safety it would not be justified in advancing a step.

He knew not what would be the extent to which the public distress would increase, or where it was to terminate; but he thought he could foresee the end of those public men who closed their ears against the cries of distress which were coming in from all parts of the country. The fact of the existence of distress was now evident. He implored gentlemen round him, whose tables were loaded with petitions from the people, to recollect that in the history of the last twenty years, there had not been found in this country an equal amount of distress. While this distress was so strongly felt along the Atlantic, from Maine to New Orleans, it must be the result, from settled causes, that the tide will flow inward, and run up all the little streams in the valley of the Mississippi, until it extended itself into every section of the Union.

On the Removal of the Deposits

UNITED STATES SENATE, February 5, 1834.¹

MR. WEBSTER said, the honorable Senator from Georgia (Mr. Forsyth) had complained that the paper read to the Senate from the Committee on Finance neither fairly stated nor met the reasons of the Secretary of the Treasury; and that, hereafter, he should enter into some detail on the subject, and present it in a fair light before the public. I shall wait, said Mr. Webster, for the gentleman's own time—and, when he chooses to try the strength of a lance in that field, it will be my duty not to refuse him an opportunity. The gentleman complained, also, of the mode of referring the Secretary's report. Had the gentleman come to the Senate this morning in his usual good humor, he would have been easily satisfied on that point. He will recollect that the subject now under discussion was deemed by everybody to be peculiarly fitted for the consideration of the Committee on Finance, and that, three weeks ago, I had intimated my intention of moving for such a reference. I had, however, delayed the motion, from considerations of courtesy to other gentlemen, on all sides. But the general subject of the removal of the deposits had been referred to the Committee on Finance, by reference of that part of the President's message; and various memorials, in relation to it, had also been referred. The subject has undergone an ample discussion in committee. I had been more than once instructed by the committee to move for the reference of the Secretary's letter, but the motion was postponed, from time to time, for

¹ An account of the debate in which these remarks were made may be found in Webster's Collected Works, immediately preceding the speeches on "The Removal of the Deposits."

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the reasons I have before given. Had the gentleman from Georgia been in the Senate yesterday, he would have known that this particular mode of proceeding was adopted, as was then well understood, for the sole purpose of facilitating the business of the Senate, and of giving the committee an opportunity to express an opinion, the result of their consideration. If the gentleman had heard what had passed yesterday, when the reference was made, he would not have expressed surprise.

There is another thing, sir, to which the gentleman has objected. He would have preferred that some legislative recommendation should have accompanied the report—that some law, or joint resolution, should have been recommended. Sir, do we not see what the gentleman probably desires? If not, we must be green politicians. It was not my intention, at this stage of the business, to propose any law or joint resolution. I do not, at present, know the opinions of the committee on this subject. On this question, at least, to use the gentleman's expression, I do not carry their opinions in my coat pocket. The question, when it arrives, will be a very grave one—one of deep and solemn import—and when the proper time for its discussion arrives, the gentleman from Georgia will have an opportunity to examine it. The first thing is, to ascertain the judgment of the Senate on the Secretary's reasons for his act.

There has been one remark by the gentleman from Georgia which it is important, I think, to repel; and which, as a member of this body, I am determined to repel and cast from me. The gentleman has said that the Senate will stand by the bank. This I deny, and throw from me. Sir, the Senate stands by the Constitution, the laws, and the country; and I believe it always will. Sir, is the country nothing? Are the laws and the Constitution nothing, that the Senate is to be charged with standing by the bank only, because it is apprehended that it will not sanction the political conduct of those high in power? Cannot we differ with the Secretary of the Treasury in regard to the interest and policy of the country, without being charged with standing by the bank, merely because the bank happens to have an interest in the question? Sir, I deny the propriety of such

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an imputation. I deny its fitness, and repel it, as I doubt not every honorable member of the Senate will repel it, as unfounded and unjust. Sir, the law authorizes the Secretary of the Treasury, on the happening of a certain contingency, to remove the public deposits from the Bank of the United States; but the law also makes it his duty, if he does remove them, to make his report to Congress, in order that the propriety of his conduct may be examined into and decided on. Sir, the Secretary has removed the deposits, and he has made his report to Congress; and Congress, as it is its duty, is now examining into the reasons which he has given for that procedure. Sir, the gentleman from Georgia says that he sees that a majority of the Senate will stand by the bank. Sir, this is not a fair putting of the question. Are we, whom the law has expressly made the judges of the conduct of the Secretary, and are compelled, by our duty, to investigate it, to be taunted with the remark that we are taking the side of the bank? This, sir, is not the question presented in the paper read to the Senate, and the gentleman from Georgia shall not, with my consent, put it so. The question presented by the committee was one of public policy, of public convenience, the safety of the funds of the public, and the proper management of those funds. Because the bank is interested in, or connected with the question before them, had the gentleman no more charity than to say that this was exclusively a bank question? Sir, the private interests of the Bank of the United States, or any other private interest, are not matters of sufficient moment to be compared with the consequences likely to result from the measures which have been adopted by the Secretary. For one, I am free to admit that, in my opinion, a re-charter of the bank, or the creation of another, is necessary; that I see no other mode by which the agitation of the country can probably be quieted, its distresses relieved, and confidence restored; but I do not admit, still, that the interests of the bank are to be regarded as any important part of the question. The gentleman from Georgia may propose what issue he pleases; but he will not make me stir from my own position. I go, sir, for the country—for its Constitution and its laws, and for relief from its present distress, and will

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not suffer myself to be turned aside from that great and paramount object.

With regard to the motion to print, I have nothing to say on that subject. I have risen to tell the gentleman from Georgia what is the true and great question before the Senate, and to say that I shall follow up that question and shall not be drawn into any new position.

Remarks on Revenue Bonds

UNITED STATES SENATE, February 7, 1834.¹

MR. WEBSTER said he should vote for the resolution, as it merely proposed an inquiry ; but no inference must be drawn from such vote that he should ultimately support the measure. There were reasons for it, it was true, which had been stated by his colleague (Mr. Silsbee) with his usual clearness and perspicuity, but he thought there were reasons against it also, some of which had been urged by the member from Illinois (Mr. Kane). The relief, he thought, to be afforded by such a measure would be but partial, whereas the distress of the country was general. The measure would benefit importing merchants, but it would not directly assist traders, manufacturers, builders, mechanics, and other classes of active men. It might prove disadvantageous to these, as the ability of the banks to discount would be lessened evidently by the suspension of payment on custom-house bonds. On the whole, he was willing that the committee should inquire, but he doubted the expediency of encouraging hopes of relief from this quarter.

Mr. Webster said he would ask to say a few words upon a part of the speech of the gentleman from Georgia (Mr. King), who had now addressed the Senate for the first time. He congratulated the Senate on the accession to its number of a gentleman of so much good sense and practical talent. The

¹ On February 7, Mr. Webster submitted the following resolution, for the purpose of bringing the subject before the Senate, and said that he would take occasion to make some explanations in relation to it :

“ *Resolved*, That the Committee on Finance be instructed to inquire into the probable effect of the present state of commercial affairs in the revenue of the United States.”

Later in the debate he made the remarks here printed.

general scope of his observations Mr. Webster thought entirely correct, but in one particular, perhaps, he might a little differ from him.

The question to which he (Mr. King) had directed his attention was this : whether the disproportion between the home price of cotton and the price abroad was caused by the state of our money market, or was produced by other causes. The gentleman had argued that this disproportion cannot be ascribed to the state of our money concerns, because other causes may have existed competent to produce the same effect. The price here, he says, and says correctly, may be too low for a just relation to the price abroad, from a fear entertained by purchasers here that the price abroad will not hold up. It is not only, he says very justly, the present price abroad, but the probability there may be of that price sustaining itself, which governs the price here. All this is just. Want of confidence in the continuance of the foreign price may keep the article down here ; but still the question is, is that the actual cause in the present case ? Suppose that to have been the only cause in 1825 of a similar effect, what is the proof of the existence of any such cause now ? It appears to me, said Mr. Webster, that if there were no fall of prices, except in the single article of cotton, there would be much weight in the gentleman's argument. But we see a fall of price in everything, or almost everything. We see it in stocks, in real estate, in merchandise of all sorts, and in labor itself. We find a universal cause, therefore, to be at work ; and it seems more just to ascribe the low price of cotton to the operation of this universal cause, thus affecting everything else, than to seek for some new and distant cause. When I say the low price of cotton, I mean that price which is not proportionate to the price abroad. There is another remark of the gentleman, to which Mr. Webster would for a moment refer. The gentleman had suggested that the price of cotton was, and must be, as high as it ought to be ; that is, at a rate fixed by fair result from the combination of the operation of demand and supply, because the country was full of capital, and, if cotton fell below its just value, there were enough ready and able to buy, and to take it out of the market. It is true,

said Mr. Webster, there is capital enough in the country, but then the very difficulty lies in the exchange of capital — a difficulty growing out of the state of our moneyed concerns. How is capital to be exchanged for cotton? How is the real estate, how are the stocks, or the ships, or the manufactured products of the North, to be exchanged for cotton? Not by barter — not by exchange of commodity against commodity. It can be done only by the intervention of money, and this money is not to be had. The circulating medium is deranged. This is the precise evil. There is capital enough and property enough, but the exchanges of property and of capital are all obstructed. Money is the measure of the value of capital, and its representative also; and the exchanges of capital, in other words, all the business of commerce, is carried on by the agency of this representative. At the present moment this representative is incompetent to do its duty — it does not perform its office; and the result is, that exchanges of capital, in other words, commerce itself, is embarrassed, and must stop, precisely to the extent of this incompetency of the money system to execute its ordinary duty. I think, then, that it may be true that the country has capital enough, and that cotton is yet lower than it ought to be, in consequence of the state of the currency. I think purchasers do not buy either cotton or other articles, because they have not money to pay; and are not confident in their hopes of any such immediate change as shall enable them to command money, by the sale of their own property, or other means. In the course of this debate, said Mr. Webster, the subject of the interruption of domestic exchanges has been again brought forward, as the thousandth charge against the bank. It is perfectly strange to me, that it was not foreseen that this effect must necessarily take place. I think it quite unavoidable. The member from Pennsylvania (Mr. Wilkins) had accused the bank of making profit by its dealing in exchanges, and had read from a letter of Mr. Crawford on that subject in 1817 — the extracts from which that had been read, had proved nothing to the purpose for which they were quoted; but, if the whole of the letter had been read, it would have proved the reverse of the doctrine that was contended for. Mr. Crawford's idea was

this : that it was the duty of the bank to make these exchanges, without charge, when there was no difference in the exchanges created by the operations of commerce, and nothing else. What ! was the bank to have no compensation for the risk it incurred in sending these bills of exchange from place to place, backwards and forwards ? Mr. Crawford never entertained such an idea, nor did the bank ever subscribe to such a duty.

The gentleman from Georgia would see that when an alteration in the course of trade takes place, there is then a difference in the exchange, according to the balance of trade one way or the other. Large quantities of specie could not be transported to where it might be required, under two per cent, including freight, insurance, &c. ; and if the balance of trade had to be adjusted by specie, there was then, naturally, a difference of exchange ; but the coming in of a great institution, like the Bank of the United States, with a large capital, had produced a beneficial effect in regulating the exchanges. Mr. Webster said that he had no doubt that the honorable Senator would find that in no country had the cost of exchange been so small as in this, since the year 1820.

But as to the charge against the bank, of its refusing to buy domestic bills, Mr. Webster had already said this was inevitable, and just what has been very often predicted. Gentlemen had argued this question as if the United States Bank could sell these bills without paying any regard to the operations of trade. How could it carry on its purchases of domestic bills, without the aid of the revenues, or anything else, between portions of the country where remittances are all wanted one way ? It could not do it. And the course of trade with the bank is not backwards and forwards from the North to the South — it is not that course of exchanges which meets another. The trade of the country goes in a circle.

It was probably known to all practical men, that the amount of bills drawn at New Orleans on New York was three, or four, or five times as great as the amount drawn at New York on New Orleans. Now, said he, how can this be carried on by the mere capital assigned to the New Orleans branch ? It is quite impossible. The ability to do much of this arose from

the circumstance that the bank was to emit the revenue. This gave it means. All things show, that the bank stopped the purchase of bills, at the West and Southwest, from necessity, in consequence of disconnecting the mercantile operations of the bank from the transmission and remittances of the revenue. Some part of this business, doubtless, the deposit banks can do: that they can do it all, and do it equally well, is not to be expected. It is certain the Bank of the United States cannot now do it.

Look at the millions and millions upon millions of purchases that were made there during the cotton season, and see how it is possible for the bank, with the capital assigned to the branches, to carry on their purchases with bills. They cannot supply it by one-fourth part — the purchases being so large in that direction. The necessary withdrawal of the deposits would compel the bank to stop the purchase of domestic bills precisely where that stoppage fell most heavily upon the community — precisely where the exchanges of the bank were most used, and have been for the last fifteen years.

If any intelligent and candid man will look at the facts, he cannot resist the conviction that the internal exchanges have been conducted by the bank at a very cheap rate. Many millions a year have been bought and sold at an average rate of some fraction of one per cent. The convenience of this had been felt everywhere, but especially in the West, the Southwest, and the South. And the loss of this convenience will not fail to be felt, and felt severely, in the same quarters. The money in circulation in all these great productive quarters of the country will be, as has been justly said, below par in the great cities of the centre and the North, and to that extent, exactly, will there be a depreciation in the value of their products.

There are yet other topics, sir, entitled to be considered, connected with this important subject of exchange, but I omit them for the present.

On the North Carolina Resolutions regarding Removal of the Deposits

UNITED STATES SENATE, February 14, 1834.¹

MR. WEBSTER said, he agreed with the honorable gentleman from Georgia (Mr. Forsyth) that it was not usual, in cases of ordinary petitions, to occupy a great portion of the time of the Senate either in discussing the merits of the petition itself, or to inquire into the character and connections of those whose names it bears. But certainly, said Mr. Webster, I differ entirely and widely from the gentleman in supposing that, considering the present state of the subject which occupies both Houses of Congress, and what was more, the undivided attention of the whole country, there was the least degree of impropriety in paying more than the usual attention to the petitions on the one and on the other side of the question. The right of petition is a great constitutional right; it is not a mere form; it is a right of the utmost importance, so far as it is exercised in regard to public measures; and a mode, the most authentic and efficient that we know of, to express the opinions of the people to those who rule them. Well, the gentleman had insisted that the exercise of this right, on a public question, necessarily draws after it the propriety of inquiring from whom the petition comes — from persons of what respectability — of what aggregate

¹ Resolutions and proceedings of a meeting of citizens of Burke County, North Carolina, on the subject of the pecuniary embarrassments and deranged state of the currency of the country, which they attributed to the removal of the public deposits from the Bank of the United States, praying for some mode of relief, and recommending the immediate restoration of the deposits to that institution. Presented to the Senate by Mr. Mangum of North Carolina, on February 11.

numbers, and under what influence they were believed to be acting; for the purpose of acquainting ourselves thoroughly with the character of petitions on both sides, and with the persons whose names are attached to them as memorialists, that we may judge justly of their weight.

All this is necessary to be known, in order to arrive at a fair expression of public opinion. The gentleman has said, that in the meetings held on the subject, there was no discussion, but simply an expression of opinion. Be it so, they are component parts of the will of the people. The gentleman had observed, that although this meeting, as well as others, professed to be called together without distinction of party, it immediately took a particular character: and that it was composed of persons who disapproved of the act of the Executive. The gentleman thinks there is a political stimulus at the bottom of all this proceeding. He (Mr. Webster) thought far otherwise — thought that the politics of the country, so far as was meant thereby the political advancement of one man or one set of men, was very little connected with this matter. Look at the three thousand carpenters, house joiners, masons, painters, and other citizens, who have laid their case on our table this morning, from New York; every one of whom, in signing his name, had added his place of abode, his business, and his occupation. Was it, said Mr. Webster, to be imagined that all these men had been actuated only by a political motive to advance one man, or one set of men, and to disappoint others?

Have we seen such a course pursued heretofore? Has such a state of things existed when a political question merely has agitated the public mind? Never. Nothing in the history of public opinion has been presented to equal what has been passing before the two Houses of Congress during the last six weeks. Why should all this have happened? What has caused this burst, the outpouring from so many of the people, in so many ways, to both Houses of Congress? When men of known character and reputation, that from the first have been the friends of the Administration, have now come forward and expressed their disapprobation of this measure, can it be said that they did it for a political motive? Are their

own assertions not to be received as true? For one, he must say, that the state of the country ought to be attentively considered, in consequence of the numerous petitions that had been presented to the Senate; and Mr. Webster thought that the Senate was not bound to inquire who had sent them, and under what circumstances they had been produced. Let the people speak, and let us hear their speech. Let us understand, only, whether what we listen to is the voice of those who are interested in upholding the acts of the Executive, or whether it be the true voice of the people—the voice of that great majority who have no interest in the Government, except that it should be a wise and good Government. Throw open the doors wide to all petitions—receive all, canvass all, compare all, and wherever the great preponderance is, there let it be considered that we have ascertained the public will.

Mr. Webster had not been so fortunate, when this memorial was under debate on Tuesday, as to learn from the honorable member from North Carolina (Mr. Brown) what the facts were upon which he founded his heavy charges against the conduct of the bank. But, Mr. Webster said, he had since sought to inform himself, from such means as were at hand, as to the condition of the bank, with a view of ascertaining how far it was justly liable to an accusation of unnecessarily withholding discounts, and thereby continuing the public pressure.

On the first of this month, it appeared, the condition of the bank was this:

The amount of its loans, fifty-five millions, within a fraction.

Its notes and bills in circulation, nineteen millions.

Amount of money in bank on deposit, ten millions, within a fraction.

Specie on hand, ten millions and a half.

The amount, then, for which the bank is liable at any time to be called on is twenty-nine millions, being the amount of its bills in circulation and of the deposits in the bank.

To meet this demand, it holds ten and a half millions of specie; that is to say, it has an amount of cash in its vaults a little more than equal to one-third of its existing liabilities.

It was very possible that, under other circumstances, some

enlargement of the circulation might be made on this amount of specie, though Mr. Webster had understood the Bank of England did not feel justified in going far beyond this proposition.

The Bank of England (said Mr. Webster) is on the most friendly terms with Government; it has recently received a renewal of its charter, its notes are payable in one place only, and they are made, moreover, by statute, a lawful tender in the payment of all debts, except by the bank itself. Yet, under all these favorable circumstances, it appears, from the evidence taken in the House of Commons, to be a general rule with the bank to keep on hand bullion to the amount of one-third of the circulation and deposits. Thus, on the 1st of December last, the liabilities of the Bank of England were :

Notes in circulation	£18,659,000
Deposits	12,415,000
Total	<u>£31,074,000</u>

And the assets, or means of payment, were :

Securities	£23,160,000
Bullion	10,134,000
Total	<u>£33,294,000</u>

This shows, as I have stated (said Mr. Webster), that the specie on hand is equal to about one-third of all the liabilities of the bank. I am enabled to present this state of the Bank of England in December, in consequence of a rule, I believe, incorporated into the new charter of that bank, by which the bank publishes periodically, say monthly or quarterly, its actual state; that is to say, it publishes an account of its circulation and deposits, constituting its liabilities; and of its securities and bullion, constituting its assets, or means of payment. And I have no doubt, that much good results from these periodical publications, inasmuch as they give the commercial world an opportunity of being always well informed of the true amount of the actual currency of the country. But, in reasoning upon the ability of the Bank of the United States to extend its loans, under present circumstances, we are to remember that it has twenty-four branches, spreading over a

vast country, some of them nearly two thousand miles apart, and that, although not bound to do so by law, it has been in the habit of receiving, at one branch, the bills of all other branches as cash. Under ordinary circumstances, as experience has proved, this was practicable without great inconvenience. But in the altered state of things, greater caution is evidently made necessary. The Government is opposed to the bank. Everything done by the Executive, and by the Treasury, for the last six months, has been calculated to shake its credit. Other banks have been placed in an attitude of opposition to it. Runs have been made, in one instance at least, on its distant branches; and, consequently, it has become necessary to give new strength to these branches. These twenty-four distant branches are like so many fortresses, all of which must be doubly manned, now that all are threatened, and some actually attacked. I will not say, that, under such circumstances, the bank could not safely discount farther; I only say it is not clear to me that it could, and I have confidence that the directors, knowing what is expected of them by the community, will do their utmost to relieve distress.

There is another circumstance worthy of consideration. It is this: There are in circulation five or six millions of bank checks, or drafts. These are all payable on demand, like notes and bills, and heretofore have answered all the purposes of notes and bills. But intimations are daily thrown out, that orders will be issued from the treasury forbidding the receipt of these drafts or checks at the custom-houses and land offices. Should this be executed, it is expected, I suppose, that these drafts will be thrown upon the bank, to be redeemed in specie. But, Mr. President (said Mr. Webster), the great consideration remains yet to be mentioned. The debt due to the bank is fifty-five millions of dollars, and its charter will expire in two years and twenty days. Now, sir, would it be at all prudent to run up these fifty-five millions to seventy-five, or to make any other considerable advance on the existing amount of discounts, considering how soon all is to be called in? Indeed, is it not high time to commence the process of collection and reduction? Could anything but the unexampled condition of the country

justify the bank in holding its amount of loans as high as it now is? Is the collection of fifty-five millions a thing which can be done suddenly? Others may take a different view of the subject, but, for one, I confess, that unless there be reasonable ground to expect a continuance of the charter for some time, longer or shorter, I think any such further extent of the loan would be a measure of most questionable propriety. No doubt, if the bank might expect to be continued, even for a short period, and especially if its relations to the Government were restored, by causing it to become, hereafter, as it has been heretofore, the depository of the public moneys, it might safely augment its discounts, and effectually relieve the public distress. A law that should continue the bank, even for a short time, and that should re-establish its relations with the Government, which are now broken off by the removal of the deposits, would quiet the country immediately and afford such relief, I have no doubt, that the business of the now opening year might yet go on, and the policy which threatens to benumb the business of the whole country for the next twelvemonth be avoided.

The present is a moment of spasm and agony. The whole social and political system is violently convulsed. This, if no relief come, must be succeeded by a lethargy which will strike dead the commerce, manufactures, and labors of the community. This, I think, sir, is the real prospect before us.

Later in the debate upon the North Carolina resolutions Mr. Webster said he felt that he and others had a right to complain of the manner in which the honorable member from New York (Mr. Wright) had alluded to them. He has referred to us (said Mr. Webster) as "those who have taken the side of the bank." Now, sir, I have not taken the side of the bank. I do not admit the question to be rightly stated, when it is represented as if, on one side of it, there was nothing but the interest of the bank. I am not the advocate of the bank, nor will I admit that the interest of the bank forms the great subject before us.

The gentleman disclaims all intention of any imputation, by the use of these words, and therefore I notice them only, to repeat again, that I protest against giving to this all-important

subject the character of a mere controversy between the act of the Executive on one hand, and the interest of the bank on the other. I pay no more regard to that interest than to see that justice is done, and the faith of the Government fulfilled towards it. The great question respects the currency of the country, and the public distress, which the interference with the public revenue has produced — a question of vast moment and universal bearing. The alarming shock which has been given to the public prosperity by the act of the Secretary is the subject about which I concern myself, and some remedy for that enormous mischief is the object at which I aim.

Sir, the honorable member charged the bank, the other day, with unnecessary curtailment of its discounts; and his proof was, that, on the first day of December last, it had drawn in several millions, three or four perhaps, more than the amount of deposits which, at that time, had been withdrawn from its vaults. This argument of his, he thinks, has been either misrepresented, or not fairly answered. It is true, sir, that when the gentleman formerly urged this argument, I did not reply to it, because I thought he had said other things to which it was more necessary to reply. It did not then, and does not now, strike me that there is force in this argument. The bank was informed that the deposits would be removed on or after the first day of October. It was not told how suddenly or how gradually—it was only told they would be removed. The amount, at that time, was nine millions. Now, sir, was it not the plain duty of the bank to prepare itself at once to give up the whole? The whole was demandable, and the bank was informed the whole would be demanded. What could it do but make itself ready to pay the whole? Nay, further, the gentleman well knows, that, besides the sums actually drawn out, drafts were made on the bank for large sums, payable at sight, and these drafts placed in the hands of State banks, to be presented whenever they chose. The bank, therefore, was most clearly compelled to prepare itself to answer, at once, all the demands which the Government had the power of making upon it. If it had not done this, it would have acted a most inconsiderate part.

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One other consideration has escaped the notice of the honorable member from New York. The bank had a large amount of moneys on deposit belonging to individuals. The very first effect of the pressure, caused by withdrawing the public deposits, was a very rapid reduction of the amount of these private deposits, because, when money begins to grow scarce, the first to be used is that which lies on deposit, to the credit of individuals, in the bank. This sudden reduction in the amount of private deposits, being so much subtracted from the means of the bank, was another cause which obliged the bank to restrain its discounts.

I pass, Mr. President, to the remarks of the gentleman from North Carolina (Mr. Brown). He accuses the bank of having broken up the internal exchanges of the country. The bank has ceased, in a great measure, to purchase domestic bills. This is the charge. It is true, in point of fact; and was not this precisely what was to be expected? If the honorable member will recur to the Debates of 1832, he will find it stated, over and over again, that one effect of discontinuing or refusing to re-charter the bank, would necessarily be this very interruption in the course of the domestic exchanges. The whole evil was then fairly and fully presented to the honorable gentleman. The removal of the deposits has now hastened that evil. It has driven the bank to the necessity of ceasing to buy bills, somewhat sooner than it must have been brought to the same point, by the approaching expiration of its charter. I had occasion, the other day, to remark, what I will now only repeat, that the ability of the bank to buy inland bills at a cheap rate has depended, heretofore, essentially on its chartered privilege of possessing and transmitting the public revenue; and that the withdrawing of these deposits, as well as the approaching expiration of its charter, takes away this ability.

The honorable member denounces the directors for demanding greater premiums for drafts on distant places than formerly, and greater than other banks. He has read a price current from Philadelphia, to prove that while the Girard Bank, one of the deposit banks, sells drafts for one-half of one per cent, the Bank of the United States demands one and a half per cent;

that is, three times as much, for drafts on the same places. And the honorable member ascribes this to mere inordinate desire of great profit on the part of the bank.

Sir, a little reflection will show the gentleman the error of all this. He must certainly see that no such thing as two prices so widely different can possibly exist for the same thing, in the same place, at the same time. Who will buy of the United States Bank, if he can buy, on the other side of the street, at one-third the rate which that bank charges him? Supposing the prices demanded by the two banks to be as stated, it would either follow that the Bank of the United States could find no purchasers, or else that the Girard Bank, though it mentioned a nominal price, really had no exchange to sell. The latter is probably true, or nearly so. Having a portion of the revenues to transmit, the Girard Bank may doubtless be able to buy inland bills to a limited extent. And as the experiment, as it is called, is now on trial, which is to determine whether these State banks can perform the public services heretofore rendered by the Bank of the United States, and perform them as cheaply as that bank did, it is probably true that, when it can draw at all, the Girard Bank draws at a low rate — at a rate as low, or nearly so, as that heretofore usual with the Bank of the United States. But its ability is limited. It cannot supply the whole demand. Purchasers, therefore, must go to the Bank of the United States, or other State banks; and the pressure of the times having made money scarce, and the Bank of the United States not being able to draw as usual, having lost the deposits, and now no longer having the transmission of the revenues, the rate of exchange has necessarily risen. And it will doubtless continue to rise. The deposit banks, as is already most manifest, cannot do the business of the internal exchanges as the Bank of the United States has hitherto done it. To a certain limited extent—to the extent, that is to say, of their own means, aided by the public deposits—the deposit banks may be able to buy and sell domestic bills, and they may be willing to appear to do this business at the former rates; but it is already apparent, that, for very obvious reasons, they cannot operate over the whole subject, so as to keep down all the

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exchanges. Now this is precisely what the Bank of the United States could do, and did do ; and is precisely what the Government has deprived it of the power of doing any longer.

The gentleman from North Carolina again asserts that the Bank of the United States has endeavored to break down the State banks. What is his proof? On what facts does he rely for his assertion? The State banks themselves do not think so. They do not see the Executive destroying a monster, whose power and whose existence is dangerous to them. No such thing. On the contrary, they see it prostrating an institution friendly, both in its nature and its conduct, to them. Do they not petition for its re-charter? Do they not supplicate Congress to restore the public moneys to their former and their proper place in its vaults? Is it not notorious that, with the exception of those banks which have been made deposit banks, the general and prevailing desire of well-conducted State institutions is, that the deposits should be restored, and the Bank of the United States continued?

Allow me now, sir, to make a few remarks in reply to the gentleman from Georgia (Mr. Forsyth), and I will not longer detain the Senate.

The gentleman insists that this question is made a political question. Sir, let us understand one another. If he means to say that these petitioners desire the President and Congress to adopt some public political measure to relieve the country, he is certainly right. In this sense, the question is a political question. An evil has occurred in our political system demanding remedy, and the remedy, like the evil, must be political. But, if the gentleman means that all these memorials and petitions, all this excitement in Congress and out of it, and all these cries of distress, have in view, wholly or mainly, a change of men, he is greatly and dangerously mistaken. He will so find, I think, and that shortly. Sir, the people demand relief. They demand it of those who are competent to give it. They ask it of the Executive and of Congress. They will be as thankful to receive it through the instrumentality of the gentleman himself, or those who act with him, as from any other hand. Let those who have the power, reinstate the people in that prosperity

which they enjoyed six months ago; let them restore confidence, let them revive business, let them relieve distress, and they will quiet the country, and receive the grateful thanks of millions.

The gentleman, sir, considers me as having admitted that the bank possesses the power to relieve the country, and that it would relieve it, if it were promised that its charter should be continued and the deposits returned. Not so, sir; not at all so. What I said was, that a restoration of the deposits, and a continuance of its charter, even for a short time, would give the bank this power. Without these, or at least one of them, it has not the power. The power is to be derived from something which must be first done by Congress. Deprived of the deposits, an object of attack and denunciation by the executive Government, exposed at so many points, and actually assaulted at some of them, with an existing debt so large, and so soon to be collected, and so near to the end of its existence, I do not see, clearly, that the bank can relieve the country by a new extent of discounts. If it can, as I have already often said, I trust it will; but that it can do it with safety, is a proposition not plain to my understanding; and if the directors say they cannot do it, I shall believe them sincere, and I believe them to be the proper judges also. They have every just motive, certainly, to go to the very utmost extent of the ability of the bank to mitigate the sufferings of the community — and to that extent, I most ardently wish they may proceed. Let them do their utmost, and show that they do their utmost, and the country will not be deceived, notwithstanding all the efforts which may be made to mislead or prejudice the minds of the people.

On the Revolutionary Pension Bill

UNITED STATES SENATE, February 25, 1834.

MR. WEBSTER moved that the Senate postpone the previous orders, for the purpose of taking up the bill from the House making appropriations for the payment of revolutionary and other pensions for the year 1834. He would take that occasion, he said, to make a remark or two on the subject. It had been customary to take up appropriation bills, when discussion was not anticipated, at any time, and pass them through the Senate. There came from the House of Representatives an appropriation bill which was referred to the Committee on Finance; it was acted upon at the first meeting of the committee thereafter, and reported to the Senate. He kept his eye on the bill, but was prevented from calling it up by the interesting business before the Senate, which had excluded nearly all other matters. Although it was not his practice to notice anything that appeared in the newspapers in this city, a respect for the Senate induced him, at the present time, to do so. His attention had been called this morning to an article in the *Globe*, referring to the Committee on Finance, and the appropriation bill, which he would now read. The article is as follows:

"The Veterans of the Revolution."

"It has now become quite apparent that the majority of the Senate of the United States intend to second the effort of Nicholas Biddle to prevent the revolutionary pensioners from receiving their half-yearly dues on the 4th day of March. The appropriation bill passed the House of Representatives nearly three weeks ago, providing money for this object, and was sent to the Senate. Ever since that time it has quietly remained in the possession of

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that notable Committee on Finance, which, the other day, was so prompt in making an elaborate report in a few hours after reference of Mr. Clay's resolution on the deposits. Mr. Webster is chairman of the committee, all of whom, saving one person, are hostile to the President. It is well known that these appropriation bills, when the time draws nigh for disbursement, are privileged bills, and are generally passed by unanimous consent. If the object be not to create new embarrassment — to grieve and distress the war-worn soldiers of the Revolution, that thereby it may be shown the Bank of the United States is more potent than the Government — what does Mr. Webster mean by keeping this in his pocket ? ”

Now, sir, said Mr. Webster, before I say any more, I will ask the Secretary to give the date on which the bill came from the House, the date on which it was referred to the committee, and the date on which it was reported to the Senate.

The Secretary replied, that the bill came from the House, and was referred to the committee on Thursday, the 6th of February, and that it was reported by the committee on Monday, the 10th of February.

Mr. Webster continued: The Senate would then see how long Mr. Webster kept this bill in his pocket. It came to the committee, which meets on Mondays and Thursdays, on a Thursday; and on the Monday following the first day of meeting thereafter, the committee acted on it, and it was reported to the Senate on the same day. Now this was not all. The gentlemen who conducted that press (the Globe) had reporters in the Senate for the purpose of giving its proceedings to the public; and, what did he see? Why, in the proceedings of Monday, the 10th February, as reported in that paper, will be found the following:

“Mr. Webster, from the Committee on Finance, reported the bill making appropriations for the revolutionary and other pensioners of the United States, without amendment.”

The gentlemen themselves who conduct the Globe had recorded the fact, that the bill was reported on the 10th Feb-

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ruary; and yet on Saturday last they said that Mr. Webster kept it for three weeks in his pocket. Now, sir, it is possible that those who made the statement were unconscious as to the facts, but they were not unconscious as to the motives which induced them to make it. It remained now to be seen whether this explanation would be followed by a retraction of the unfounded charge, or whether, by silence, it would be persisted in; and it also remained to be seen whether this detection of error would teach the editors more prudence for the future. He made this statement simply out of respect to the Senate, which, he was sure, would not believe him capable of the gross neglect of official duty imputed to him. He should despise himself if he were capable of being influenced by any such motives as those charged in the publication he had just read.

Mr. Webster then moved that the bill be read the second and third time, and passed, and, there being no objection, the bill was read the second and third time, and passed accordingly.

On the Massachusetts Resolutions upon Removal of the Deposits

UNITED STATES SENATE, March 10, 1834.

MY colleague (Mr. Silsbee), said Mr. Webster, has left me little to say on the present occasion. In all his observations I heartily concur, and cheerfully unite with him in laying these opinions of the Legislature of Massachusetts before the Senate, and in asking for them due consideration.

No doubt can be entertained that the sentiments of these resolutions are the sentiments of the people of Massachusetts. There is not a county or district, and perhaps hardly a township or parish, in the whole State, in which the removal of the deposits is not either severely reprobated or deeply deplored. We should not be true representatives of Massachusetts, sir, if, on this subject, we did not hold language unequivocally clear and decidedly strong. We should not be true representatives if we did not say, that she has no particle of doubt that the distresses of the country are to be attributed to the conduct of the Executive towards the bank. The State expects us, in the name of her suffering citizens, to call on Congress for relief and redress. She expects us, in her name, to declare that her course of prosperity is arrested, her great interests all deeply injured, and misfortune and distress brought upon her people. She expects us to say, that, as one of the States, she looks to Congress to protect the currency of the country, to guard the public treasures by law, and to interfere by its own power, efficiently and promptly, to rescue that currency from derangement and depreciation, and to restore those treasures to a safe and legal custody. She expects us to

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call your attention to her commerce, cramped and obstructed ; to her manufactures, suffering the severest distress ; and to the pressure felt by individuals in every class of her community, from loss of confidence, loss of security, and loss of employment.

Mr. President, in one of the resolutions which have been read, the Legislature of Massachusetts has signified its opinion as to the appropriate remedy for existing difficulties, and I think the time has now come to submit a measure proposing such remedy to the consideration of Congress and the country. It is now several weeks, sir, since I pledged myself here to propose the renewal of the charter of the Bank of the United States, with more or less modification and for a longer or shorter period, if no other measure promising to afford relief should be brought forward. It is now nearly three months since the existence of a general and very uncommon pressure in the country was alleged, and though the truth of this statement was then denied or doubted, yet, for the last month, the evidence has been too strong to be longer resisted, and no man now stands up here to say that the country is not in an alarming condition. No man will doubt that these things must change of themselves, or be changed by our legislation. I cannot but suppose, Mr. President, that the executive Government sees and laments the distress of the country, but still it has nothing to recommend to us. It lives in the hope that affairs will change for the better of themselves, under the operation of the existing experiments. It is fair and just, I presume, to consider the purposes of the Administration, as made known by the report of the Committee of Ways and Means, in the House of Representatives. That report may no doubt be received as an authentic declaration that the Administration proposes no change in its measures. Its language is, that the deposits ought not to be restored, and that the bank ought not to be re-chartered. As the Administration, therefore, has nothing to recommend, the time has come to redeem my pledge ; and I give notice that, on Monday next, by direction and authority of a majority of the Committee on Finance, I propose to bring forward a measure for the consideration of

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the Senate. I am aware, sir, fully aware, of the great responsibility assumed by this movement. I see all the difficulties which lie in the way of success, but with myself, and others of the committee, the sense of duty does not allow us to shrink from an encounter with these difficulties, formidable and numerous as they certainly are. I shall at present, sir, say but little of the particular provisions of the intended measure, but I will say, that in proposing a measure to meet the exigencies of the present crisis, regard must be had not only to the state of the currency, and the state of business in the country, but to the state of opinion also. Two objects, therefore, are to be kept in view in deciding on the nature of the measure which is to be brought forward.

1. It must be prompt and efficient. It must be such as will bring immediate and effectual relief to the community; and I know no such measure, except the restoration of the deposits and the re-chartering of the bank for some period. We cannot establish a new bank to come into existence before 1836, being expressly prohibited from so doing by the charter of the existing bank. It is idle, therefore, to hold out to the country any hopes of relief from a new bank. I am entirely willing to leave open the question of a new bank for consideration and decision hereafter, but, at present, relief from any such quarter is absolutely impossible. Nothing remains, then, but to endure the present state of things, or to prolong the existence of the present bank. No one can doubt that a restoration of the deposits, and the re-chartering of the bank, whether for a shorter or a longer period, would remove the distresses of all classes, and bring to the country immediate and effectual relief. And a new bank being out of the question, no other remedy whatever is proposed or suggested. The restoration of the deposits, therefore, and a continuance of the bank charter, obviously constitute that remedy which the currency and the business of the country now demand. These two things will afford relief, at once efficient and prompt.

2. The second great object is, to propose the measure in that form which shall be most likely to unite different opinions. With this view, the measure should go to the extreme of

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conciliation. It should be such as the country will say men of different opinions ought to agree to without hesitation. It should yield everything which can be yielded, with safety to the main object. And here, two modes of proceeding present themselves :

The one is, to propose a continuance of the charter of the bank for a short period — a period no longer than shall enable it to call in its great amount of debt without injury and distress to the people ; and to continue it, for this short period, with no essential alteration, except that Congress should be left at liberty to make any other bank, if it should see fit so to do, after March, 1836 : thus giving Congress and the country an opportunity to reconsider, deliberately, the whole subject of the currency and the general propriety of a bank, and to establish a new bank, should it think best, with whatever changes and modifications its wisdom may dictate ; and to bring the new bank, should one be created, into existence while the present bank shall be gradually retiring, thus avoiding the shock which would always attend the sudden change of one institution for another, the fear of which shock may be supposed to give an undue preference to the existing institution. This will leave the question between the old and a new bank open, upon fair and equal terms. If such a measure as is here suggested should be proposed, it will present an intelligible and simple question to Congress and to the country : “ Shall the charter of the present bank be continued, for a short time, until Congress can maturely consider and decide on some more permanent measure, leaving it at full liberty to do so, or shall the present state of things continue ? ”

The other mode is, to introduce the measure in a more permanent form, to propose a re-charter for fifteen or twenty years, with or without an augmentation of capital, and with such modifications, in other respects, as it may be hoped will be satisfactory to the community, looking to the great objects for which the bank is to exist, namely, the distribution of the revenue and the regulation of the currency. The selection must necessarily lie between these modes of proceeding. There is no other alternative, as it appears to me.

There is one other provision, which may wisely be incorporated into the measure, whether its form be the temporary or the more permanent one. It will be recollected that, in the bill which passed both Houses in 1832, for continuing the bank charter, a section was introduced which authorized Congress to restrain the bank, after 1836, from issuing notes of a lesser denomination than twenty dollars. This was intended as the commencement of measures for extending, in a considerable degree, the specie circulation of the country, by withdrawing small notes, the general idea then expressed being, that if the State banks would withdraw all notes less than five dollars, the Bank of the United States ought to withdraw all less than twenty, thus giving to our circulation a broad ground-work of specie in the first place; then an exclusive space between five dollars and twenty, for the notes of local banks; and, lastly, a common field for State banks and the Bank of the United States, as to notes and bills of all denominations of or above twenty dollars. This object is, I think, of great importance, and one which ought to be kept in view in all our legislation.

When we consider the present state of opinion within the walls of Congress, and with the Chief Executive Magistrate, it is evident that, whatever measure be proposed, it must be submitted to the people in a more direct and emphatic manner than is usual in ordinary cases. The intelligence of the country, and the distress of the country, will, without doubt, sufficiently attract the attention of the people to any measure which may be proposed, and their will must decide its fate.

I wish, now, sir, in conclusion, to say two things:

First, to avoid raising hopes which may be disappointed, I wish to say that every well-informed man in Congress and in the country is just as good a judge as I am of the probable success or defeat of the measure. I have no private information respecting men's opinions or purposes, still less any private understanding with any of those public men who have hitherto supported the removal of the deposits. And, secondly, sir, I wish to say, that, while the present state of embarrassment and distress shall continue, an adjournment of

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Congress is a thing not to be thought of. Our constituents will not welcome us, they ought not to welcome us to our own homes, if we should leave our seats here without having relieved the country. We have the power to relieve it; nobody else can relieve it; and it is our business, I think, to remain where we are till we fulfil the just expectation of the country.

In reply to Mr. Forsyth, in the same debate, Mr. Webster said, that it had struck him with some surprise that the gentleman from Georgia should complain of delay in bringing forward a measure of relief, which the gentleman knew, probably against his own opinion, was in opposition to the will of the Executive, a measure which the gentleman had told the Senate, over and over again, the Executive never would sanction, and over and over again, a measure which would not be consonant with the public will. Would it have been a proper course, in the eyes of the gentleman, to anticipate the design of the Executive in reference to the subject of a remedy? How long was it since the gentleman from Georgia had told the Senate that the Executive might have a plan to present to the country? How long was it since the gentleman had said that this plan would have been ere now presented, but for the peculiar organization of the committees. In a manner calculated to deter others from acting, the gentleman had told the Senate that the Secretary of the Treasury had a plan to present; and that this plan would have been made known before this time if relations of more intimate intercourse had existed between the committees and the President; and he (Mr. Webster) had waited until the Committee of Ways and Means of the House, whose relations of intercourse with the President were of a more intimate character, had announced that no plan of relief was to be expected from the executive branch of the Government. Now, for the first time, this announcement had been made, and no remedy was now expected by gentlemen on this side, unless it came from another quarter than the Executive. He had himself, two months ago, when he had first adverted to the plan of a remedy, expressed a wish rather to follow, than to lead, the

movements of the Executive. He had said that he should prefer to see some plan introduced under the favor of the Executive. Nothing of the kind had made its appearance, and, until the report which was made by the Committee of Ways and Means, none of those who are in the way of understanding the views of the Executive had intimated that nothing was to come from that quarter. It was now stated, distinctly enough, that the experiment which was now in progress was the only remedy which was to be presented from the Executive. It was not, therefore, in his opinion, at all out of time to present his plan. He had waited to see if some one else would move. No one had made any movement, and now a plan was about to emanate from the other side.

As to the terms on which the gentleman from Georgia would give his support to the re-charter of the bank, highly as he respected the opinion of that gentleman, and much as he should value his aid, he did not know that it would be possible to obtain him as an auxiliary. But that gentleman would do what would entitle him to the everlasting gratitude of the people, if he could, or if he would, name any terms on which the passage of the bill could be secured, so that it should receive the full form and force of law. If the gentleman would name any such terms, he (Mr. Webster) should receive them as affording some gleam of hope in the midst of the terrible darkness with which the country was surrounded. He only understood the gentleman as speaking for himself; he wished he could understand him as speaking for some one else. If there was any gentleman who occupied a station nearer to the Executive than that gentleman did, and who would bring forward any proposal of terms on which the final passage of a bill to re-charter the bank could be secured; if these terms assumed any character within the extreme verge of absurdity, he (Mr. Webster) would pledge himself to vote for their incorporation into the measure.

As to the terms stated by the gentleman from Georgia—the reduction of the rate of interest, the power of the States to tax the stock, and the extension of the control of the Government—they were all topics of great importance, and

would, when necessary to be considered, receive all due consideration. But in the short and simple form in which he proposed to introduce the bill, merely to continue the charter of the bank for a brief period, he had supposed, as the gentleman from Georgia had voted for the re-charter bill of last Congress, that he would have preferred to take the institution, even in its present form, in order to give relief to the numerous important and suffering institutions which would be relieved by the re-charter of the bank.

The gentleman from Georgia had said that the power to re-charter the bank was with the people, and that, if they desired its re-charter, it would be re-chartered. He agreed that the power was with the people, but it was a power which the people could only exercise through the organization of Congress. The people could never accomplish the re-charter of the bank in any other way. The gentleman from Georgia had said that the people would do it by filling the halls of legislation, in the next Congress, with those who would represent their wishes. But, although that was one way in which the people could effect their object, there was also a shorter way in which they could make their desires known and acted upon: the people could, by another process, so express their opinion as to make it imperative on the conduct of their representatives, in spite of any prejudices, predispositions, or predilections which they might have entertained. The gentleman from Georgia, however, had said, that the people had already decided that the bank should not be re-chartered. Where was the proof of the fact? When the proof was asked for, the gentleman gave back nothing more than what had been so repeatedly stated, and so repeatedly answered before.

Mr. Webster denied that the circumstances of the re-election of General Jackson led to any such conclusion. If such was the sentiment of the people, the bank could not be re-chartered. But it was his belief, and he believed it as firmly as he believed anything under heaven, that a majority of the people of the United States desire to see the bank re-chartered. In order to relieve them from the distresses under which they

now labored, he believed that, if the question were now put to the people, not less than three-fourths of them would give an affirmative response.

He did not admit that he was liable to the charge of endeavoring to force the two Houses and the Executive to any particular result. It would be a hopeless task for him to oppose his wishes to those of both Houses, if he did not entertain the belief that the people would so act and speak as to control the opinions and action of the Government. The gentleman had asked him if he was of the opinion that Congress, that the Senate, should continue to sit here to control the coordinate branches of the Government.

So far from desiring to control, he would not do this even to persuade them to the adoption of a different course. He was as willing to stay here all the summer, to see if gentlemen on the other side could bring him over to their opinions, as much as to see if they would subscribe to his. But here, in one end of the Capitol as well as in the other, and not only here, but in every stately dwelling throughout the country, even in every moderate dwelling, and in every cottage, an opinion would shortly prevail, that a measure of relief was necessary, was indispensable, and that it was imperative in Congress to provide for such remedy before it should separate. For himself, he was willing to go over to any measure of the Administration, if it would present to him any which had the semblance of being an efficient and a speedy remedy. He had not desired, he had not courted, the responsibility of bringing forward a measure. He had no desire to carry any particular object; all that he wished was, to obtain some plan which would succeed in gaining the form and force of law. But he had no alternative. No one else would move. There seemed to be no disposition in any other quarter to bring forward any plan of relief. They who had, with him, adopted the measure he should propose, had done so under the belief that the distress of the country required a prompt action. They believe that there was no design among the friends of the Administration to prescribe any remedy in a legislative form; and he was therefore called upon to submit the plan which

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had received the sanction of a majority of the Committee on Finance, and then to leave a more permanent measure to the decision of the country. The people would not fail to do justice to the motives which had actuated him and those with whom he acted, for they would see that there was no other course left which could be pursued by those who did not occupy that relation of intercourse with the Executive which would enable them to acquire his views and act upon them.

Remarks in Debate on Re-chartering the United States Bank

UNITED STATES SENATE, March 20, 1834.

THE honorable member (Mr. Wright) contends that those who thought the bank was created by an unconstitutional exercise of power could not vote to continue it, even for the shortest length of time, under any circumstances whatever. I am not in the predicament of those who hold that opinion, and therefore the argument is not addressed to me. If it were, I should simply say, that I think the gentleman's conclusion a *non sequitur*. If the general voice of the country has declared the bank constitutional, as it repeatedly and constantly has done, I think a just deference to the judgment of others might induce those who hold a different opinion to refrain from suddenly discontinuing the bank, at the cost of so much difficulty and distress to the country. I do not well perceive how any man can undertake, on the strength of his own opinion, to understand and to administer the Constitution in a sense opposite to that in which he knows a vast majority, both of the States and of the people, receive and understand it, and have so done from its very beginning.

The honorable member has said, that the bank has many friends in the State he comes from ; and that the most ardent and active of them are the great money-dealers in the city of New York. My information is quite different from this. I think the fact is quite the other way. I think it is as clear as daylight, that those who are most anxious for the continuance of the bank are the traders on small capitals, the men of active business, the manufacturers, the mechanics, and the whole class

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of the industrious and enterprising. All the memorials, all the proceedings of public meetings, public complaints and petitions, in all their forms, prove this, incontestably. I do not conceive how it is possible for a gentleman to say that brokers and money-dealers are the most zealous for the continuance of the bank. I am widely at issue, therefore, with the gentleman on this general fact. I maintain that a continuance of the bank is desired, more earnestly than by any others, by the active class of society, by those whose living depends on their own earnings.

The honorable member thinks me inaccurate in my remarks on the safety-fund system of New York. He says that only one of the three commissioners, not all of them, as I had supposed, holds his place by a political appointment, the other two being appointed by the banks themselves. The honorable member is no doubt correct in this; but still, whether the board be not a political board, depends on the fact, whether both or either of these two commissioners are, or are not, appointed on political grounds, and act with political views.

The honorable member says, too, that two-thirds of the stock of all the safety-fund banks belongs to those whom he calls my friends. I hope, sir, that I have friends among stockholders in banks as well as other classes of society in that State; but I must pray the gentleman not to denominate any one class of men as being particularly my friends, as if there was more friendship between me and any one class, than there is between me and all the other classes.

Mr. Wright said, he only meant that they acted politically with Mr. Webster.

I dare say, continued Mr. Webster, the honorable member intended no improper inference should be drawn from his remark; but I must repel every inference, even though unintended, from any gentleman's remark, that any one set of men, in this country, have greater favor to expect from me than the rest, or that I look for the regard or friendship of any one class more than that of all others.

It may be very true, sir, to return to the subject, that more

than half of the banking capital of the State of New York belongs to persons opposed to the Administration. But this proves nothing, except that the Administration is not acceptable to the great commercial interest of the city of New York. The banks in that city are large, and their capital makes a great part of the aggregate capital of the whole. But the gentleman will not say, that throughout the State, especially in the great western district, any considerable number of the safety-fund banks are under any other control than that of the friends of the Administration.

Take all the banks in the country which have been incorporated since the safety-fund system was established, and can the gentleman mention one which has not been studiously and designedly placed in the hands of political friends? Is there, now-a-days, any such thing as obtaining a bank charter from the Legislature of New York, without commissioners, named in the act itself, to distribute the stock; and is there any one instance in which a majority of shares is not allotted to men of one particular political party? Will the gentleman say, that a hundred of the first merchants of New York, or Albany, or Utica, or Buffalo, could this day obtain a charter, for themselves and their associates, the stock to be divided as they might choose? I am altogether misinformed if any such thing could be expected. With us, and I suppose elsewhere, banking is no monopoly. Certain general laws regulate the whole business, and one class of persons has the same right, and the same facility, in applying for and receiving charters, as others, if they conform to the general law, and show a probable necessity for the institution which they ask for. No question is asked as to what school or what party the applicants belong; and this is as it should be. To place all bank circulation, and bank accommodation, and bank influence, into party hands, to be used for party purposes, would be, and is, if such a thing anywhere exists, an enormity, worthy only of the worst governments.

The honorable member objects to my protest against the war waged by the President against the bank. He says it comes from the wrong side, and that it would be more just to protest

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against the war waged by the bank against the Government. Sir, the protest is not mine ; I do nothing but present it. It comes from seven thousand of the citizens of Boston, well able to make it good. It was not their purpose to go into the origin of this war, to inquire who published the first manifesto, or who first took up arms. They saw such a war actually existing, prosecuted, and carried on ; and they found themselves greatly injured by it, and therefore they protested against it. They had no protest to make to the bank, because the bank was not their agent, nor their government ; but they do protest, and have a right to protest, against the executive Government entering into any such quarrel. And it will be wise to regard their protest. They are earnest who make it, and those should not be deaf to whom it is addressed.

But, sir, it is true, that, speaking on another occasion, I did myself say that the Secretary of the Treasury had made an attack on the bank ; and I repeat the declaration. In his report on the removal of the deposits, he not only assails the general character and proceedings of the bank, and imputes to its directors the worst designs, but he directly questions its ability for the ultimate and punctual payment of its debts. He assaults its commercial credit. Yet, sir, in this very bank, which the Secretary not only charges with violations of its charter, but against the credit of which he indulges in strong remarks, the United States had seven millions of dollars ; and a law of Congress, which the Secretary cannot repeal, makes its bills a tender in all debts and dues to the Government ! The Secretary declares to the whole world of this institution, thus most intimately connected with the highest interests of the Government, that if the Government should leave large sums in its vaults, its ability to be prompt in the payment thereof to Government, hereafter, might well be doubted !—a declaration, in my opinion, in all respects of most extraordinary character. He says, too, that it is well understood that its superior credit was not founded on any particular confidence in its management, but was occasioned altogether by the agreement to receive its notes in payments to the United States ; thus intimating that it owed its commercial

credit to the favor of Government, and leaving others to infer what would happen to that credit when such favor was withdrawn. Fortunately for the country, as well as the bank, its credit has been able to stand against all sorts of executive denunciations.

The honorable member, sir, has said, that there seems to be a disposition to impute to him, or to others, an inclination to appeal to the prejudices of the people, and to support the Administration by an outcry of danger to liberty, to be apprehended from the bank. This the honorable member repels, and declares that he makes his addresses to the good sense and to the patriotism of the people, and not to their prejudices. Such, it is true, sir, are the captions of all such addresses, whether made in or out of Congress. They are all headed, "To the good sense and patriotism of the people." I do not expect to hear those, who raise a false alarm about liberty, begin by saying, "Friends, I address myself to your prejudices; I know your love of liberty, and I come to take advantage of it; you have a weak side, and I mean to attack it; all that I say of danger to liberty is mere pretence, and, disguised under that pretence, I have far different objects." No, no, sir. None of the formulas have this sort of beginning; they more usually run after this fashion: "My enlightened fellow-citizens! Nothing but devotion to your interest could induce me to raise my voice against the monster! Your liberties are in the utmost peril! Nothing but one man's efforts can save them from destruction! A bank is an engine of despotism! A moneyed aristocracy is overturning the Constitution! Sons of martyred sires! will you hesitate longer to trust all your rights, and place all your hopes, in one man's hands? Huzza! then, for him who can place his own foot, and help us place our feet, on the neck of the monster! Be assured, my enlightened fellow-citizens, that in saying all this, I appeal not to your prejudices — God forbid! — but to your good sense and your patriotism."

This, sir, appears to me to be something like the usual strain of discourse by which the public mind is to be reasoned into opposition to the bank.

Sir, do men of intelligence, in or out of Congress, really

believe that there is danger to public liberty to be feared from the bank? I can hardly think it possible; yet the honorable member from New York says he does fear such danger, and of course he is to be believed; but, is it possible that men, whose vision is not, unconsciously to themselves, distorted by politics and party, can see any such thing? Was there one man in five thousand who felt or expressed any such fear until party, beginning the cry here, shouted it over all the land, for mere party purposes? We have had a bank, sir, for near forty years; that is to say, almost as long as we have had a government; the people have felt no evil from it, nor apprehended any danger; it is only when its continuance becomes connected with questions of party politics, that the alarm bells are all set ringing, and, on such occasions, it must be confessed, their din is almost stunning. Where was this apprehension for liberty when the present bank was created? Its vigilant guardians in New York, how happened it that they were all then found sleeping? How happened the bank to receive the vote of all the members from that State, except a few, whom the gentleman would not be likely to allow to be the most watchful sentinels of liberty? Sir, the gentleman says that I have spoken of these expressions of fear and apprehensions of alarm as being fraudulent: of course, sir, I apply no such epithet to what may be said by any gentleman in debate here; but that all which we hear outdoors on this subject emanates from good sense and honest purpose, is more than can easily be believed.

The gentleman, sir, in another part of his remarks, has said, that I have declared that we must always have a Bank of the United States, in all time to come. I have not said so. [Mr. Wright rose and said he had only meant to contend that that was the result of Mr. Webster's reasoning.] That, said Mr. Webster, is the gentleman's own inference. What I did say, I am ready to repeat; and that is, that, looking to the present political and commercial state of the country, to the actual existence of so many State banks, and the duty imposed by the Constitution on Congress respecting the currency, I do not see how that duty can be performed without the instrumentality of a national bank. Times may change, and a bank may

become unnecessary ; but, in the present state of things, I am free to confess that I regard a bank, established by Congress, as an indispensable instrument in the beneficial administration of government. The honorable gentleman inquires what security there is, if this bill for continuing the bank for a limited time pass, that, instead of reducing its debt, the bank will not go on augmenting it, till it run up to a hundred millions ? Sir, such a thing is impossible. All the restrictions in the present charter are retained, and the bill which I propose, authorizes Congress to make another bank and to place the public revenues in such bank whenever it pleases. A leading feature in this bank is, that it leaves the whole matter open to the deliberation of Congress. Congress, therefore, can at any time adopt measures, should they be necessary, to compel the bank to collect its debts.

This, sir, is the answer to the gentleman's inquiry. It will be seen that, by this bill, the deposits are to be restored to the bank, but, at all times hereafter, to be subject to be removed at the pleasure of Congress.

But, Mr. President, there is one singular objection made to the bank by the gentleman. In point of form, at least, it is a new indictment. It is, that the bank will not, as in duty bound, die easy ! It holds out contumaciously against the Government, while the Government is admonishing it to yield up its breath without a struggle. It insists on a renewed existence, says the gentleman ; it claims a re-charter, in opposition to the known will of Government. The Government ! Why, sir, what is the Government ? The Government, the gentleman says, has warned the bank to resign its being quietly, but the bank still stands out against the will of Government. What Government, sir ? What is the Government ? Who has warned the bank not to expect renewal ? Not Congress, certainly. Congress has passed a bill for continuing its charter for fifteen years, by large majorities in both Houses ; and one of the last acts of the House of Representatives was to express its undiminished confidence in the bank. And yet, sir, we are told that the Government has warned the bank to die in peace, but that the bank stubbornly clings to life, in opposition to the well-known will

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and kind warning of the Government. Ay, sir, the Government! We understand what the gentleman here means by Government. This House is nothing, the other House is nothing; both are nothing. The President is the Government! Sir, lexicographers frame their definitions of words and terms from their actual use; and if one of them was now compiling a political dictionary, he would find much recent authority for defining Government, in a free country, to mean the Chief Executive Magistrate.

The bank has had solemn warning, it is said, not to apply for a continuance. What is this solemn warning? Where is it to be found? Is it found in the strong vote of the two Houses granting a new charter? Is it found in the report of the Secretary of the Treasury, at the very session when the two Houses passed the bill? Is it found in the petitions and memorials on our table? No, sir. It is found nowhere but in the declaration of the President; his will alone is to stand for the decision of Government. But the President himself — when did he first give this warning? The first message in which he mentioned the subject contained an expression of his opinion, that the prolongation of the bank charter was matter fit to be considered and decided by Congress, and recommended to Congress to take up the subject at an early day, and consider and decide upon it accordingly. Congress, in due time, acted on this recommendation. It took up the subject, it did consider it, and it did decide upon it. It passed a bill as the result of its deliberations, and that bill the President negatived.

The honorable member has gone into other topics. He has remarked upon the cause, the precise and particular cause, which occasions, as he thinks, the present pressure on the country. He finds this cause in the hostile conduct of the Bank of the United States towards the State banks. This is his opinion, but it happens not to be the opinion of these State banks themselves. A great majority of such as we have heard from, almost all of them, instead of any such cause, unite in assigning the distress to a very different one, that is to say, to the conduct of the Secretary; and on this subject I cannot but think their opinions better authority than those of the gentleman. Sir, if the con-

duct of the bank towards the State banks be fit to be complained of, why do they not complain? Why do not the deposit banks themselves find fault? Why do they not speak out, and make the hostility of the Bank of the United States towards them public and manifest? Sir, they pretend to no such thing. Pressed as they are on all sides, and anxious as they must be to shift responsibility from themselves to others, they do not, nevertheless, undertake to come before us and charge the Bank of the United States with any acts of hostility or unkindness.

But, sir, in conclusion, the honorable member has his measure of relief, very general, it must be admitted, and very simple. It is, that we should settle the question. By which he means, I suppose, that one House or both should vote their approbation of the Secretary's proceedings. But what would this settle? It might settle the question immediately pending; but it would not settle the subject. It would not compose the public agitation, because it would not restore the public prosperity. This is the mistake, sir, which, as it appears to me, the friends of the Administration daily commit. They seem to think that the great questions which now so generally occupy and so deeply agitate the country are to be settled by authority. They think all will be quiet and prosperous again, if only the Senate and the House of Representatives would approve the Secretary's conduct. Sir, they deceive themselves. No such superficial remedy will touch the source of the disease; and this people, sir, are not a people to be satisfied merely with opinions from high places. If they believe the laws to have been violated, they will insist that they be redressed; if they feel severe distress, arising from political mismanagement, they will demand relief, and will continue to demand it, and, until it be obtained, they will not be hushed into quiet by any lullaby whatever.

Remarks Occasioned by the President's Explanatory Message

UNITED STATES SENATE, April 21, 1834.¹

MR. WEBSTER said he had arrived in the city and resumed his seat since the debate began, and he rose to say that he thought the transmission of this protest to be one of the most important and ominous occurrences of these extraordinary times. It is, said Mr. Webster, a communication of so anomalous a character, in the first place, that it perplexed the discrimination of the Senate to know what preliminary disposition to make of it. Some are for receiving it, others are against receiving it, although it has been read, and its contents commented on. It seems to hang, at present, in a pendulous condition, between reception and rejection. It has no resting place. It is like the coffin of Mahomet, suspended between heaven and earth, as unfit to go higher, and finding no proper abiding place below. But I am unwilling that the discussion of this great and grave topic should be embarrassed by questions of form. I am obliged to the member from Mississippi (Mr. Poindexter) for the strong grasp which he laid on the principles of this paper, at its first appearance, but as to the form of proceeding with it, I confess I should have preferred to have passed over the question of reception, and gone at once to the substantial character of the protest itself. It is too interesting, and will prove so — too exciting, and will prove so — to go from the Senate, till it shall have received such discussion and such reply as it is entitled to.

¹ A message from President Jackson, received by the Senate April 21, 1834, explanatory of his protest of April 17. Mr. Webster addressed the Senate on the subject of the protest during the debate. See his speech, "The Presidential Protest," in the Collected Works.

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It is said that the paper is indecorous, and justly offensive to the self-respect of the Senate ; but there is much more in it than indecorum, or want of respect to the Senate ; and I think we shall best consult the character of this body, and better fulfil the expectation of the country, by going at once to the dangerous assertions of power which the paper sets up, and fully exposing those claims of power to the people. The President denies that this House, or indeed either House of Congress, has any right to express any opinion upon his conduct, except by way of impeachment. This is, indeed, new and startling. That in a popular representative government, the representatives of the people may not express their opinions upon measures of the executive power, is a doctrine, I believe, now, for the very first time put forth. Who has ever heard of it before ? Though this right is denied to either House, the President's reasons are urged mainly against the right of the Senate, and the chief reason is, that the Senate are judges in cases of impeachment, and that, therefore, until impeachment come, it should be silent. But this objection, it is obvious, would stop the mouth of the Senate, with respect to every other officer of the government, as well as the President, because all officers are equally impeachable, and the Senate must try all impeachments.

I know not, sir, who drew this protest, but whoever he was, instead of looking for sound constitutional principles in the history of free governments, in the practice of legislatures in the United States, or elsewhere, he has contented himself with an ancient truism from the black-letter law books, that the House of Lords cannot institute an impeachment, or frame articles, and then try it themselves. But do not the Lords, as well as the Commons, express their opinions, by votes and resolutions, of the conduct of ministers of the Crown ? Yet they have the power, and the sole power, of trying impeachments. The Senate has an undoubted right, in my opinion, to express its opinions on the public conduct of executive officers. The contingency, that it may be called on to try an impeachment, is no bar to the exercise of this right. Doubtless there may be cases in which the propriety of its exercise might be much in-

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fluenced by the consideration that the Senate held the power of judging on impeachment. But this is matter of discretion. In every case, the Senate must proceed upon its own sense of propriety and justice. There may be, sometimes, good reason to refrain from expressing opinions, and sometimes there may be the highest propriety in expressing such opinions in the strongest manner. The right of doing so is clear, and is not to be disputed. The possession of judicial power does not abridge the legislative power of the Senate. It does not take away any of its rights as a representative body.

Sir, the President of the United States has been misled. He is uninformed, or misinformed, as to the real state of opinion in the country. I fear there are those who share his confidence, and who present to his view only one side of things. The state of the country is alarming. Members of the Senate, who have not been out of this city for five months, are not aware of the depth and strength of the public feeling. I should like to know what advisers have recommended to the President to send us this protest. Its circulation through the country will add fuel to feelings already sufficiently enkindled. The President has around him the heads of departments. Can anybody tell us whether any of those heads, and if any, which of them, advised to send this paper to the Senate? Or which of them, if any, sat by, neither assenting nor dissenting, afraid to speak their minds, or unwilling to hazard their places?

Sir, it is not without some color of reason that the President, in this paper, speaks of the heads of departments as his secretaries. One-half of them have never been confirmed by the Senate. Three of them, usually called members of the Cabinet, being one-half of the whole, were appointed last year, in the recess of Congress, and now, when we are near the end of the fifth month of the session, their appointments have not been sent to the Senate for confirmation. This is a thing before altogether unheard of. I hesitate not to say that this course is derogatory to the rights of the Senate, and inconsistent with the intent and spirit of the Constitution. It is altogether without precedent. Other Presidents have felt it their duty, when they have made appointments in the recess, to send them to the

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Senate immediately upon its assembling. Usually such nominations come to us the first ten or twelve days of the session. It has rarely happened that they have been delayed as long as a month. But near five months have now elapsed, and yet these nominations are not sent to us. When they do come, I hope we shall know who has approved the sending of this protest. I hope we shall learn who has made himself partaker in it, by positive sanction or silent acquiescence.

Sir, I will not now discuss the assertions, the pretensions, the dangers, of this protest. Others are in possession of the debate. I do not see that the case is altered by this codicil. The whole measure is of an alarming character. It attempts one great stride towards the accumulation of all power in executive hands ; a stride which I doubt not the Senate will resist with firmness and constancy ; and in that resistance they will be supported by the country.

Mr. Forsyth then addressed the Senate, and in reply Mr. Webster said : The gentleman from Georgia has referred to the decision of that high tribunal, by whose decision all public men, and all public bodies, must ultimately stand or fall. I cheerfully join in the appeal, and have no fear of the result. It can never be, that the people of the United States will, for no earthly reason, submit to severe suffering and to encroachments on constitutional liberty ; and, I doubt not, the same people will stand by the Senate in all just and constitutional efforts to sustain its own rights and the rights of Congress. I believe the Senate stands strong in the confidence of a majority of the nation, and that nothing would more produce dismay and despair than that this body should be found to flinch or falter in a moderate, but firm and decided, opposition to the present course of public measures.

The gentleman supposes I am mistaken as to the number of members of the Cabinet not yet nominated to the Senate. But there is no mistake. The Secretary of State, the Secretary of the Treasury, and the Attorney General have been in office six or seven months, and none of them have been sent yet to the Senate for confirmation. What reason is to be given for this

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departure from all former practice of the Government? How is it to be justified? We may conjecture a reason, indeed, but it is such a reason as ought not to exist. I know well that these officers hold commissions which run to the end of the session. Such is the constitutional provision. But I know, too, that although that be so, all other Presidents have laid such appointments before the Senate early after the commencement of the session. This has been the uniform course; and to hold back so many of the heads of departments for so many months from the beginning of the session, is a thing altogether without precedent.

As to the protest, sir, it appears to me that the honorable member from Georgia (Mr. Forsyth) has conceded it away. He admits that there may arise emergencies in which the Senate has a right to express its opinion upon executive proceedings; to make a case, as he expresses it, for the consideration of the people. If this be so, then the Senate itself is to be the only judge when that emergency has arisen. The gentleman's admission acknowledges the right. The exercise of the right, then, on any given occasion is matter of discretion; and this is precisely the ground on which I placed the question when last speaking. Indeed, it cannot be otherwise. Suppose the President should commission persons to office whom the Senate has rejected; might we not resolve, that such a proceeding was unconstitutional? Suppose he should threaten to turn us out of our seats by force; might we not enter on our Journal a resolution against such menace? No one, surely, can doubt this. The Senate, then, possesses the right; on a recent occasion it saw fit to exercise that right, in its discretion, and under its own sense of duty; and it is a right which its members are bound to maintain, in behalf of themselves, and for their successors in all time to come. I say nothing, at present, upon the claims of executive power put forth in the protest. All I mean now, is, to assert the right of the Senate to express its opinion upon the conduct of the Executive, in critical emergencies, and on momentous occasions, notwithstanding no impeachment be pending before it.

On the French Spoliations Prior to 1800

UNITED STATES SENATE, December 17, 1834.

MR. WEBSTER rose and said, this subject had been often before the Senate, in various forms, and he trusted that its general character was well understood by every member of the Senate.¹ He therefore should not repeat what had been said on former occasions, in presenting the question to the consideration of this body. Several reports had been made, going much at large into the merits of these claims, and setting forth the obligation of making to the claimants some degree of compensation. Those reports were accompanied by documents, statements, and estimates, of a voluminous size, all of which had been printed, and he supposed had been before every member of the Senate. The session before last (since which period not a great number of changes has been made in the Senate), he went largely into details to show the justice of these claims; and, at the last session, an honorable Senator from Maryland (Mr. Chambers), not now here, had opened the whole subject to the consideration of this body.

He (Mr. Webster) should content himself with stating very briefly an outline of the grounds on which these claims are supposed to rest, and then leave the subject to the consideration of the Senate. He, however, should be happy, in the course of the debate, to make such explanations as might be called for. It would be seen that the bill proposed to make satisfaction, to an amount not exceeding five millions of dol-

¹ A bill to provide for the satisfaction of claims due to certain American citizens for spoliations committed on their commerce prior to the 30th day of September, 1800.

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lars, to such citizens of the United States, or their legal representatives, as had valid claims for indemnity on the French Government, rising out of illegal captures, detentions, and condemnations, made or committed on their property prior to the 30th day of September, 1800. This bill supposed two or three leading propositions to be true.

It supposed, in the first place, that illegal seizures, detentions, captures, condemnations, and confiscations were made, of the vessels and property of the citizens of the United States, before the 30th September, 1800.

It supposed, in the second place, that these acts of wrong were committed by such orders and under such circumstances, that the sufferers had a just right and claim for indemnity from the hands of the Government of France.

Going on these two propositions, the bill assumed one other, and that was, that all such claims on France as came within a prescribed period, or down to a prescribed period, had been annulled by the United States, and that this gave them a right to claim indemnity from this Government. It supposed a liability in justice, in fairness and equity, on the part of this Government, to make the indemnity. These were the grounds on which the bill was framed. That there were many such confiscations no one doubted, and many such acts of wrong as were mentioned in the first section of the bill. That they were committed by Frenchmen, and under such circumstances as gave those who suffered wrong an unquestionable right to claim indemnity from the French Government, nobody, he supposed, at this day, would question. There were two questions which might be made the subject of discussion, and two only occurred to him at that moment. The one was, "On what ground was the Government of the United States answerable to any extent for the injury done to these claimants?" The other, "To what extent was the Government in justice bound?" And *first* — of the first. "Why was it that the Government of the United States had become responsible in law or equity to its citizens, for the claims — for any indemnity for the wrongs committed on their commerce by the subjects of France before 1800?"

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To this question there was an answer, which, whether satisfactory or not, had at least the merit of being a very short one. It was, that, by a treaty between France and the United States, bearing date the 30th of September, 1800, in a political capacity, the Government of the United States discharged and released the Government of France from this indemnity. It went upon the ground, which was sustained by all the correspondence which had preceded the treaty of 1800, that the disputes arising between the two countries should be settled by a negotiation. And claims and pretensions having been asserted on either side, commissioners on the part of the United States were sent out to assert and maintain the claims of indemnity which they demanded; while commissioners appointed on the part of France asserted a claim to the full extent of the stipulations made in 1778, which they said the United States had promised to fulfil, and in order to carry into effect the treaty of alliance of the same date, namely, February, 1778.

The negotiation ultimately terminated, and a treaty was finally ratified upon the terms and conditions of an offset of the respective claims against each other, and for ever; so that the United States Government, by the surrender and discharge of these claims of its citizens, had made this surrender to the French Government to obtain for itself a discharge from the onerous liabilities imposed upon it by the treaty of 1778, and in order to escape from fulfilling other stipulations proclaimed in the treaty of commerce of that year, and which, if not fulfilled, might have brought about a war with France. This was the ground on which these claims rested.

Heretofore, when the subject had been before Congress, gentlemen had taken this view of the case; and he believed there was a report presented to the Senate at the time, which set forth that the claims of our citizens, being left open, the United States had done these claimants no injury, and that it did not exempt the Government of France from liability.

It was urged, too, that there was no reason to cherish a hope of obtaining any substantial indemnity from France, as it had undergone so many changes in its political affairs on ac-

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count of the revolution, and other causes, since the depredations were committed. The subject was met with accumulated objections, and it was said that, on account of the worthless character of the claims, there could have been no reasonable hope of obtaining indemnity from France, and therefore the Government was not bound in equity to make compensation at all. He thought we had advanced too far in this period of our history to maintain any longer such an hypothesis, because we have since had experience that claims, not more meritorious in their character, have been pressed on France under the existing Government, until, by a solemn treaty, it has been stipulated to pay for them twenty-five millions of francs. The Government had itself asserted the validity and value of such claims as were now existing in behalf of the citizens of the United States against the French Government. We had obtained from France a treaty of indemnity, by which she stipulated to pay, for aggressions, the sum of twenty-five millions of francs.

It had never been supposed that these claims prior to 1800 could fairly be compensated out of this fund, for the very reason that they were released ; and if the Government of the United States had had no other claim to press upon the justice of the French Government than such as existed before 1800, they would have been barred and precluded from any such claims by the express words of the treaty of 1800. This question seemed now of less importance to be dwelt upon, inasmuch as by a recent treaty with France, and under a law of Congress passed for carrying it into execution, a board of commissioners had been established to ascertain the claims on that fund, and to distribute it according to the intention of the treaty ; and that board, it was well known, a year or two since, came to the determination that this class of claimants had no claim on the fund, because the United States had released all their claims by the treaty of 1800 ; and the whole fund obtained by the recent treaty was to be distributed among those who had suffered acts of wrong committed subsequent to 1800.

This, then, was the ground of the claim. Here, then, were substantial claims which were in the nature of property, and

they were such claims as, in regard to that nation and other nations, could have been settled after the pacification of Europe, according to their value. The Government of the United States relinquished the claims in behalf of the nation, but not for individual claimants. By this act of the Government they had been deprived of all right to apply to the Government of France, and had been adjudged to have no right to apply under the commission now sitting to distribute the sum stipulated to be paid by France for depredations committed on the commerce of the United States.

This is the ground of the claim.

The other question respects the amount. It was natural it should be asked, "how was it that we are able to fix, as the reasonable estimate, the sum of five million dollars?" The answer was, those to whom the subject had been committed had gone through the labor of an examination, in order to see what was the number of vessels and cargoes destroyed, burnt, confiscated, &c., prior to the treaty of 1800, by the Government of France. Their opinion was, that the sum of five million dollars was not too high, in proportion to the sum obtained for the other class of claimants. He did not propose to go further into the subject at present.

Remarks on Public Education

UNITED STATES SENATE, January 19, 1835.¹

MR. WEBSTER said that this was a local measure. It had attracted his attention principally because it was an appropriation of a reserved fund to a new object, and one which was highly interesting in its character, and which ought to be kept in view, wheresoever it came within the admitted powers of the legislative authority. He understood that the two per cent on the sales of public lands was reserved for the purpose of making roads. It was proposed to apply this fund, with the consent of Alabama, to another equally important object — common education. If it was the pleasure of the State to apply it to the latter purpose, in preference to the former, he knew of no interest which the United States could have in objecting to the change. He thought this new object was one which merited especial regard. He should venture to submit to the gentlemen who were more interested in the matter, an amendment to the amendment reported by the committee. He did this for the purpose of establishing the character of the schools; a character which ought not to be departed from when grants were asked of a public character, whether in the form of land, or money, or any other form. The amendment reported by the committee provided that this fund should be appropriated to schools for the education of the children of the indigent. There were two principles connected with general public education, which he desired to be kept in view, and they were both consistent, elementary, and important. One of these

¹ In the debate on the amendment to the bill of Mr. Moore of Alabama, reported by the Committee on Public Lands, the amendment providing that the two per cent fund proceeding from the net proceeds of the public lands in that State shall be vested in stocks to remain as a perpetual fund for the support of schools in Alabama.

principles was that the schools should be free, and the other that they should be common. They should be free, that is, without charge; they should be common, that is, they should know nothing of classes of society. They should be open to all. No question should be asked, whether he who comes for admission belongs to wealthy or indigent parents; and it was this disregard of property and birth which conferred value on these schools. Where all were on an equality, without reference to property, or birth, or any other distinction, they were common schools, and no consideration of wealth was necessary to entitle to admission. This principle should be kept in view whenever the Government makes grants of money or lands for schools. Common schools ought to be for elementary, primary knowledge. He wished, with the consent of gentlemen, to change the phraseology of the bill, so as to appropriate the fund to the establishment of three common schools, and to leave out all which referred to indigent; because he thought the amendment should not recognize any qualification, or the want of it.

Mr. Poindexter suggested the adoption of a system which he had introduced in Mississippi, that those who could pay should do so, and the rest be free.

In reply, Mr. Webster said that his impressions on the subject were perhaps the impressions of one who lived in a part of the country where common education was more an act of the Government than in any other State. It was true that, where the fund for common education was a public grant, it would seem as if those who were able to educate their children should not participate in its benefits. But, on the other hand, where the fund arose from public taxation, the affluent are taxed, and ought to participate in the advantages; so that, taking the two sources of the fund, public taxation or a grant from the Government for public purposes, the matter equalized itself. It was no extraordinary favor which was conferred on the affluent, and no extraordinary hardship that was thrown on the poor. All schools were free in his part of the country, and they would be very odious if any distinctions were made.

Upon the Expunging Resolution

UNITED STATES SENATE, March 3, 1835.¹

THE vote, the great vote, which the Senate has now given, has accomplished all that I have ever desired respecting this expunging resolution.

The resolution of the Senate of the 28th of March, which it has been proposed to expunge from the Journals, asserted the proposition that the conduct of the President in relation to the public revenue had been unconstitutional. Now, this proposition might be true, or not; it was a matter on which gentlemen voted on both sides. It implies, doubtless, a power in the Senate to express an opinion on the conduct of the Presi-

¹ On February 18, 1835, Mr. Benton of Missouri offered the following resolution:

“Resolved, That the resolution adopted by the Senate on the 28th day of March, in the year 1834, in the following words, ‘Resolved, That the President, in the late executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both,’ be, and the same hereby is, ordered to be expunged from the Journals of the Senate, because the said resolution is illegal and unjust, of evil example, indefinite and vague, expressing a criminal charge without specification; and was irregularly and unconstitutionally adopted by the Senate, in subversion of the rights of defence which belong to an accused and impeachable officer; and at a time, and under circumstances, to involve peculiar injury to the political rights and pecuniary interests of the people of the United States.”

On March 3, the resolution came up for consideration, and Mr. Kay of Alabama moved to amend that part of the resolution proposed to be stricken out by first striking out the words “ordered to be expunged from the Journals.” The motion prevailed by a vote of 39 to 7, and Mr. Webster then made the remarks here printed.

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dent, and there may always be some who deny or doubt that power. It would have been perfectly in order, at any subsequent time last session, or at any time this, to have brought forward resolutions declaring that the Senate has no such power. We must have met the resolutions, debated them, and voted on them. If they had passed, they would, of course, have stood in contradiction to the preceding resolutions; and all that could have been said is that the Senate had passed inconsistent resolutions. Propositions, it is possible, may be made hereafter, in contradiction to the principles of the resolution of March. These things must be expected, and must be met when they arrive. But that which made this resolution, which we have now amended, particularly offensive, was this: it proposed to expunge our Journal. It called on us to violate, to obliterate, to erase, our own records. It was calculated to fix a particular stigma, a peculiar mark of reproach or disgrace, on the resolution of March last. It was designed to distinguish it, and reprobate it, in some especial manner. Now, sir, all this, most happily, is completely defeated by the almost unanimous vote of the Senate which has just now been taken. The Senate has declared, in the most emphatic manner, that its Journal shall not be tampered with. I rejoice most heartily, sir, in this decisive result. It is now settled, by authority not likely to be shaken, that our records are sacred. Men may change, opinions may change, power may change, but, thanks to the firmness of the Senate, the records of this body do not change. No instructions from without, no dictates from principalities or powers, nothing — nothing — can be allowed to induce the Senate to falsify its own records, to disgrace its own proceedings, or violate the rights of its members. For one, sir, I feel that we have fully and completely accomplished all that could be desired in relation to this matter. The attempt to induce the Senate to expunge its Journal has failed, signally and effectually failed. The record remains, neither blurred, blotted, nor disgraced.

Now, sir, as to the principles involved in that resolution, I am willing to discuss them at any suitable time hereafter. At present there is no leisure for such discussion; and the Senate

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having now, by so large and decisive a vote, expunged whatever was offensive in the expunging resolution, and there being no time for further discussion, I shall conclude by a motion, which I forewarn friends and foes that I shall not withdraw, which is, that the resolution be laid on the table.

Upon a Misstatement in the Globe Newspaper

UNITED STATES SENATE, June 4, 1836.

MR. WEBSTER said he did not often trouble the Senate with anything personal to himself, but a friend had pointed out to him a paragraph in the *Globe* of this morning, which was so flagitiously false, and which so directly affected his conduct as the head of an important committee of the Senate, that he thought it due even to the Senate itself to refute the calumny. The paragraph is in these words :

“It is a most remarkable thing that, while the opposition in the Senate every day parade before the public the seven millions in the stock of the Bank of the United States as a part of the surplus in the treasury, they so contrive it that not a dollar of it can reach the treasury. Judge White, Mr. Calhoun, Mr. Clay, and Mr. Webster are ever and anon pointing to the seven millions of bank stock as a fund for distribution, while Mr. Webster, as chairman of the Committee on Finance, holds back for months, from the action of the Senate, the bills passed by the House of Representatives to provide against the notorious conversion by Biddle of the means of the old bank to the purposes of the new.”

Now, sir (said Mr. Webster), the journals show that neither I nor the committee have held back anything from the action of the Senate. All bills in any way respecting the late Bank of the United States, which have been referred to the committee, have been reported to the Senate long ago, and are now on the list of orders, to be taken up in their turn. If this libeller had not been willing even to traduce and injure friends, rather than to lose an opportunity of injuring opponents, he

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would have remembered that a majority of the members of the Committee on Finance are supporters and friends of the Administration. I am happy to bear my humble testimony to the diligence and promptitude with which these gentlemen discharge their duties, and everybody knows that it is in their power at any time to report any measure they may choose to report, or to call up any business which they may desire to call up.

The bill to which the foregoing paragraph refers was referred to the committee April 14, and was reported by the committee, without any amendment, April 21, as appears by the Secretary's minutes, endorsed on the bill: "Act repealing the 14th section of the act to incorporate the Bank of the United States. April 14, read twice, and referred to the Committee on Finance. April 21, reported without amendment."

I will only add, sir, that this is not the first time that I have been obliged to take notice of statements in this paper respecting my conduct as chairman of the committee, which were in direct contradiction of the printed journal of our proceedings, and of its own diurnal report of them.

Remarks in Opposition to Mr. Calhoun's Incendiary Bill

UNITED STATES SENATE, June 6, 1836.

MR. WEBSTER addressed the Senate at length in opposition to the bill, commencing his argument against what he contended was its vagueness and obscurity, in not sufficiently defining what were the publications the circulation of which it intended to prohibit. The bill provided that it should not be lawful for any deputy postmaster, in any State, Territory, or District of the United States, knowingly to deliver to any person whatever, any pamphlet, newspaper, handbill, or other printed paper or pictorial representation, touching the subject of slavery, where, by the laws of the said State, District, or Territory, their circulation was prohibited. Under this provision, Mr. Webster contended that it was impossible to say what publications might not be prohibited from circulation. No matter what was the publication, whether for or against slavery, if it touched the subject in any shape or form, it would fall under the prohibition. Even the Constitution of the United States might be prohibited; and the person who was clothed with the power to judge in this delicate matter was one of the deputy postmasters, who, notwithstanding the difficulties with which he was encompassed in coming to a correct decision, must decide correctly, under pain of being removed from office. It would be necessary, also, he said, for the deputy postmasters referred to in this bill to make themselves acquainted with all the various laws passed by the States touching the subject of slavery, and to decide on them, no matter how variant they might be with each other. Mr. Webster also contended that the bill con-

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flicted with that provision in the Constitution which prohibited Congress from passing any law to abridge the freedom of speech or of the press. What was the liberty of the press? he asked. It was the liberty of printing as well as the liberty of publishing, in all the ordinary modes of publication; and was not the circulation of papers through the mails an ordinary mode of publication? He was afraid that they were in some danger of taking a step in this matter that they might hereafter have cause to regret, by its being contended that whatever in this bill applies to publications touching slavery, applies to other publications that the States might think proper to prohibit; and Congress might, under this example, be called upon to pass laws to suppress the circulation of political, religious, or any other description of publications which produced excitement in the States. Was this bill in accordance with the general force and temper of the Constitution and its amendments? It was not in accordance with that provision of the instrument under which the freedom of speech and of the press was secured. Whatever laws the State Legislatures might pass on the subject, Congress was restrained from legislating in any manner whatever with regard to the press. It would be admitted, that if a newspaper came directed to him, he had a property in it; and how could any man, then, take that property and burn it without due form of law? and he did not know how this newspaper could be pronounced an unlawful publication, and having no property in it, without a legal trial.

Mr. Webster argued against the right to examine into the nature of publications sent to the post office, and said that the right of an individual in his papers was secured to him in every free country in the world. In England, it was expressly provided that the papers of the subject shall be free from all unreasonable searches and seizures — language, he said, to be found in our Constitution. This principle established in England, so essential to liberty, had been followed out in France, where the right of printing and publishing was secured in the fullest extent; the individual publishing being amenable to the laws for what he published; and every man printed and published what he pleased, at his peril. Mr. Webster went on

at some length to show that the bill was contrary to that provision of the Constitution which prohibits Congress to pass any law abridging the freedom of speech or of the press.

In reply to Mr. Buchanan in the same debate, Mr. Webster remarked, that in general it might be safely said, that when different gentlemen supported a measure admitted to be of a novel character, and placed their defence of it on different and inconsistent grounds, a very simple person might believe, in such case, that there were no very strong grounds for adopting the measure. The Senator from Pennsylvania and the Senator from South Carolina, not only placed their defence of the bill on opposite grounds, but each opposed the principles on which the other founded his support of it. Where the object to be gained was apparently good, and the case urgent, as it was represented to be, how could limitations of power stand against powerful opponents, which have always been urging to despotism? Now, against the objects of this bill he had not a word to say; but with constitutional lawyers there was a great difference between the object and the means to carry it into effect. It was not the object to be gained, but the means to attain it, which they should look to; for though the object might be good, the means might not be so. His objections went to the means, and not to the object; and he did not yield the argument because the object was a good one, and the case was urgent. It was better to limit the power, and run the risk of injury from the want of it, than to give a power which might be exercised in a dangerous manner.

The Senator from Pennsylvania said that this bill was calling on Congress to do nothing but to abstain from violating the laws of the States. It was one thing, said the Senator, for Congress to abstain from giving these incendiary papers circulation, and another to pass laws saying that they shall not be published. But if Congress had no mail through which these papers could be transmitted, what did the gentleman mean by Congress abstaining from giving them circulation? It meant that Congress should interfere, and create an especial exception as to what should be transmitted by their ordinary chan-

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nel of intelligence, and that that exception should be caused by the character of the writing or publication. He contended that Congress had not the power, drawn from the character of the paper, to decide whether it should be carried in the mail or not; for such decision would be a direct abridgment of the freedom of the press. He confessed that he was shocked at the doctrine. He looked back to the alien and sedition laws, which were so universally condemned throughout the country; and what was their object? Certainly to prohibit publications of a dangerous tendency. [Mr. Webster here quoted the sedition law, to show the objects it intended to effect.] But the deputy postmasters, Mr. Webster said, must look into the newspaper mail to see if there were any publications in it touching the subject of slavery, calculated to excite insurrections among the slaves.

Now, said Mr. Webster, the country would have been rent into atoms if the sedition law, instead of saying that papers should not be published in such and such a way, had declared that the deputy postmasters should have the power to search the mails to see if they contained any publications calculated to "bring the Government into disrepute, promote insurrection, and lead to foreign war," the evils the sedition law intended to guard against. All the papers described in the law of 1799 were unlawful by the laws of any of the States; and yet that law, which had created so much excitement, and met with such general reprobation, contained nothing like the power claimed by this bill. Any law distinguishing what shall or shall not go into the mails, founded on the sentiments of the paper, and making the deputy postmaster the judge, he should say was expressly unconstitutional, if not recommended by gentlemen of such high authority. This bill, said Mr. Webster, went beyond the recommendation of the President; for his recommendation was, that the person who circulated the papers described by him should be punished by severe penalties. Now, this was the old law of liberty; there was not a word of previous restraint in it as imposed by this bill. Mr. Webster then went into an argument to show the vagueness of the bill in describing the paper the delivery of which was prohibited.

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Under it, it was impossible to determine what publications should be prohibited: abolition pamphlets were to be stopped at the South, and anti-abolition papers were to be stopped at the North. In reply to Mr. Buchanan, he said that he did not assume that these prohibited publications either were or were not property. All he said was, that they ought not to make the deputy postmaster the judge, and take away the property without the authority of law. What he had to say was, that it was a question of property or no property; and that they could not make the deputy postmaster the judge of the fact, as he could not be a judge of property known to the Constitution and the law.

Remarks on Abolition of Slavery in the District of Columbia

UNITED STATES SENATE, February 6, 1837.

MR. WEBSTER could not perceive the cause of that warmth which had been exhibited by the Senator from Virginia (Mr. Rives), while he was so strenuously exhorting other gentlemen to keep cool. He did not, however, complain of it. But this he must observe, that that honorable Senator had never heard him say more in disapprobation of slavery than had been uttered by the Senator himself this day. He had used almost the very words of the petition which so greatly offended him, in declaring slavery to be an evil, social, moral, and political. Nor could that Senator express more strongly the want of power in the General Government to interfere with slavery in the States than Mr. Webster had often and always done. The Senator had said, however, that those only were interested in this subject who were suffering in the immediate presence of the evil. This Mr. Webster could not but consider as a great mistake. Mr. Webster, though living in a Northern State, and a State non-slaveholding, felt that evil, too, from the train of consequences which it inevitably drew after it. He had as deep an interest in the peace and the preservation of the Union as the Senator from Virginia. But what was there for that gentleman to complain of in the conduct of his fellow Senators? Some of them had received many abolition petitions. Had they presented them from day to day, and annoyed the Senate by a perpetual repetition of the same thing? Was not this the first time they had been brought forward? Mr. Webster demanded the exercise of some candor and justice towards Senators situated as they

were ; and he should take care that such representations were here made as should remove from them imputations which were not deserved. He had himself presented petitions to-day which had been accumulating in his drawer for two months. And he had presented them at the same time with other gentlemen. He had not debated the subject at large, but had confined himself simply to a renewed expression of the opinion that it would be a better and more prudent course to refer the petitions to a committee, and have a report upon them. This was not a novel opinion. It had been entertained by others in that body ; and a former member from Virginia had embodied it in a motion. He had expressed no opinion in which Southern gentlemen themselves had not heretofore concurred. Where, then, was the right to complain ? But an honorable gentleman from Georgia (Mr. Cuthbert) had gone out of his way to bring into this debate a paper which somebody had given him, and which referred to opinions said to have been expressed by Mr. Webster some twenty years ago. In those opinions, as here stated, Mr. Webster saw nothing to retract. Neither now nor at any time, in that body or out of it, had any one heard from him any other opinion touching slavery in the abstract, or the power of Congress to interfere with it within the States, than had been expressed by the honorable Senator from Virginia himself. His origin, his associations, his education, his habits of thought — all had taught him that slavery was an evil, and he held it to be an evil, moral, social, and political.

Remarks upon the Bill for the Cession of the Public Lands

UNITED STATES SENATE, February 11, 1837.¹

MR. WEBSTER rose and said, that in what he had to say on this subject he should be very brief, as it was to be disposed of that day. He had gone along with the Senator from South Carolina in opposition to the bill which had just passed the Senate (the land bill), and which he had hoped would not receive the sanction of this body. In this, however, he had been disappointed, for so far as the sense of the Senate was concerned, the bill would become a law.

But the leading motive, it would appear, which had induced the honorable Senator to present his bill at this time, was that the land bill had passed, however objectionable might be its provisions. With the general features of that bill, he (Mr. Webster) had very great fault to find. The principal feature of the bill was nothing less than a clear, plain, palpable monopoly. It was a bill to confer a benefit upon the few at the expense of the many. The bill had not, as yet, become a law. Considering the small majority by which it passed, considering the reluctance with which many gentlemen voted for it, and considering that the feeling by which they were actuated would

¹ Mr. Calhoun, on February 7, 1837, offered an amendment to the Public Land Bill, providing that "all the public lands within the States of Alabama, Mississippi, Louisiana, Indiana, Ohio, and Michigan, with the exceptions of the sites of fortifications, navy and dock yards, arsenals, magazines, and all other public buildings, be ceded to the States, within the limits of which they are respectively situated," and on February 11 the bill as amended coming up for a second reading, Mr. Webster addressed the Senate on the measure

have more weight elsewhere, it was probable that the bill would not become a law. And if it should, it was to be in operation for a limited time only ; and, if found not to meet the public judgment, Congress would be called upon to do something which would be better calculated to give general satisfaction.

With regard to the present proposition, he would say there were only one or two lights in which it could be viewed. The object was to cede the lands upon certain terms, and to divest the Government of all control over them. Now, he would ask, where was the power to make this grant? If we looked upon it as a cession for the benefit of the States in which the lands lie, if it was a gratuitous grant in any degree, where was the power obtained to authorize Congress to give away the public domain? Well, the answer to this question might be, that the proposition was not to make a gift of it, as certain returns were to be made to Congress by the new States. Now, by the Constitution of the country, the trust, the management, the disposition of the public lands, was conferred on Congress ; and he would ask, was it possible that any man could maintain the proposition that, as they were placed in their hands, as belonging to the whole people of the United States, they could transfer the general disposition of them?

It appeared to him that they might just as well entertain this proposition as one to farm out the custom-house in New York on certain terms. Nor did he know that Congress had any more authority to give away these lands than the proceeds of a custom-house on particular stipulations ; nor could they surrender the control of it any more than they could assign to others the power of collecting the revenue of the custom-house in Boston or elsewhere. He saw, therefore, objections insurmountable, whether they assumed the shape of a gratuitous cession or a trust. In either case it transcended the power of Congress. What was the real duty of Congress? It was to make the public land a common fund for the benefit of the whole people of the Union. The great object was to sell it gradually. And while it was in a state of ownership, he had always held that Congress might make it more valuable by the creation of roads, canals, and other improvements of that sort.

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He had felt no difficulty, therefore, in supporting grants to accomplish these objects, because it was a very efficient mode of increasing the value of the public domain.

The duty of the Government, as he had just remarked, was to dispose of it ; but that must be done in the simplest and most unembarrassed form. And whatsoever embarrassed the title, whatsoever embarrassed the conditions, and whatsoever had a tendency to create dissension, in regard to the purchase of lands lying within the jurisdiction of the new States, should be cautiously avoided. Now, the Senate had heard much relative to the thralldom under which the new States were ; of their being subjected to another legislation ; of the condition of individuals who could not get a little act passed without coming to Congress. He wished to say that, so far as respects the equality of footing upon which the new States stood to the old, he saw no reason to impute inferiority. He maintained that nothing had been done by Congress which encroached on the sovereign power of the new States. The General Government exercised no legislation over the land lying in a State, except so far as that State had agreed to it. No power was now exercised by the Government over the new States which had not been exercised over the old.

And as to the proposition under consideration, supposing that Congress sold the public lands upon a long list of conditions, a long list of terms, how long would it be before the new States would come here, and ask for a modification of those terms ? Did the gentleman expect, by any system of this kind, to accomplish perfect unanimity of feeling and harmony between the new and old States ? He (Mr. Webster) saw no difference of feeling on the subject existing between them ; and if there was any difference, why, he thought it would show itself. Arguing against the practicability of ceding the lands, he observed that he did not mean to say that the time would not come when Congress should sell some of the residuary lands to a State ; and when that time came, it must be a direct sale, in his opinion, and not a conveyance in trust. And he did verily believe that it would by no means promote the interests of the new States themselves to enter upon the

career proposed ; and he spoke it with great deference to honorable Senators who might be supposed to understand their own interests better than he could possibly do. He contended that it was the most exciting, embarrassing, and irritating thing that could be conceived for a new State — a small State, for instance, like Michigan — to be troubled with the management of a vast quantity of land.

He objected to the bill, not only on constitutional grounds, but those of expediency also. He entertained the opinion that any system of selling lands, and confining the sales to actual settlers, brought on mischief, an interference between the legislation of Congress and the States.

With respect to lands in the hands of the Government there was no objection to a slow and reasonable graduation. He did not mean to say that all land must be of the same value. The lapse of time would raise its value. The principle of graduation he believed of no importance at all in the northwestern part of the country — for it might be said there was no land which could not shortly realize the value fixed by Congress.

As to the taxing power, he confessed that he had no objection that lands, the moment they should pass out of the hands of the Government, should be subject to taxation by the respective States in which they may lie.

Adverting to the land bill just passed, he remarked that nothing but the pre-emption clause saved it ; and that the system of pre-emption, to a certain extent, had a tendency to demoralize a State. For his own part, he would rather, at once, than grant a prospective pre-emption, see a provision inserted in the bill, that whosoever shall take the character of a settler of any surveyed lands of the United States, shall be entitled to a donation of eighty acres of land. Congress had the power of making donations, and he would prefer seeing all the pre-emption rights turned into them ; for making donations was far more reasonable, and had a greater tendency to produce moral habits and good order among society, than any pre-emption system that could be adopted.

The whole foundation of the present proposition was, that there was not sufficient impartiality and care exercised, on the

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part of the Government, in carrying on the land system. He, however, was not prepared to surrender it, under any idea that it could not be administered as it had been hitherto. He concluded by remarking that Congress had no more power to transfer a trust than to cede the public lands. He hoped that no further agitation would take place on the subject, the country being unprepared for it. Indeed, he knew the proposition would strike the people generally, as it did him, as sudden, unnecessary, and leading to a policy which neither Congress nor the Constitution would authorize to be adopted.

Reply to Calhoun on the Treasury Note Bill

UNITED STATES SENATE, May 18, 1838.

I AM not at all surprised to hear the Senator from South Carolina say that he has found my argument against treasury notes a very good one in favor of separating bank and State, for the present state of the gentleman's mind is such that he would find such an argument anywhere, on any subject, and on any occasion. So deeply is he immersed in this, his favorite subject, that I verily believe, if he should hear a discourse on theology, or a philosophical dissertation, he would start up and say it contained fine doctrines for divorce. But what did I say touching the doctrine of divorce? I insisted that the Government should fulfil its contracts; but what has that to do with divorce? Did I contend that the Government should pay anything not equivalent to specie? I have never done it. It is astonishing that the gentleman should so laboriously confound things so different; and before he attempts it again, let us understand the use of terms. I contend that treasury notes can never be at par, and by that I mean at the established rates according to law. The gentleman says they are and have been at par, because they are equal to par in New York. But he might as well say that broadcloth, or molasses, or any other merchandise is at par. His proposition is that they are equal to par in New York for the London market. But what of that? I mean that they are not equivalent to gold and silver, in the currency, and according to law. His par and my par, therefore, are not the same thing. If he means to meet the question whether treasury notes are equivalent to gold and

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silver as the legal standard, that is the question ; but if he will not meet that question, I offer no other.

He asks, how can Government pay in what is equivalent to specie, if it pay in specie-paying bank notes ? It has done so for many years, and never found any difficulty in doing it, and it never will. He speaks also of our exchanging credit with the banks, and paying the difference. But this is a confusion of ideas, or, at least, of terms. What does he mean by credit ? If he means that the Government can contract loans on as good terms as the banks, that is not denied. But what would you call a check which is given on a bank ? Is that credit ? It is not credit ; it is a thing entirely different. To make the two cases at all alike, the Government paper must be redeemable in specie, on demand, at the treasury ; and then, I dare say, its paper would be very good. He asks if Mr. Astor would pay a bank for its credit. Mr. Astor, and every man, however large their capital and credit, borrow money of the banks when they wish to do it on time, because that money is payable in specie. The gentleman calls that an exchange of credit for credit. But it is no such thing. You cannot say that a note on time is equivalent to a bank note commanding the specie ; they are entirely different. The gentleman says that the Government credit is the best in the world ; but it is not the best in the way that the Government uses it here. If he says bank notes circulate on the credit of the Government, that does not make Government notes of this kind better than bank notes payable and paid in specie. It may do very well to help out of an emergency ; but the crisis is in his argument, and the emergency in his proposition. Paper is not equivalent to specie, unless it is payable in specie.

I do not ask how it may be sold for exchange on London, but whether it will pass current as specie or as equivalent to specie. Let us try that. Will treasury notes command the specie, at par, in any State of the Union ? We all know that they will not. It is a general remark that they are under specie par ; this has been admitted, and all the facts show it.

But let us look further at what is the operation of exchanges. You may call it a transfer of bank notes. But the gentleman's

suppositions are all ideal, and never take place. All great payments are made by transfers of credit, and this is the actual payment. Look at the operations of this Government. In 1816, they passed a joint resolution authorizing the collectors to receive the paper of specie-paying banks. And how did they do it? The collectors and the books of the treasury had no separate accounts, but all was passed to the credit of the Government as specie. Look at the books for twenty years, and can you find anything there except what is put down as specie? But the notes were not kept at all; and the gentleman's notion that we must have an armful of notes for our creditors that come here, and notes that will not at once command the specie, is going on the up-hill road, and I believe the country cannot be dragged into it. And the gentleman asks, will you sell these notes for specie? That, he thinks, would be ruinous, and for bank notes he will never sell them. He will have neither specie nor bank notes. What, then, will he do? He comes back to his project at this and the last session, of the exclusive use of paper money by the Government. He will borrow neither specie nor bank notes, but will pay out and receive Government paper as the exclusive medium. The Government must have money of its own; and, as he says, if there is an emergency, and the Government is in want of more means, what is it to do? Make more issues of paper. All this he told us before, and that the Government is to sustain it at par, for which the power of the Government is sufficient. By this he cannot mean the par of specie, but of something else; for there is no truth in the proposition as a general one, that Government credit is better than any other credit. It is convertibility which makes bank notes equivalent to specie, and it is altogether ideal that, by receiving specie-paying bank notes, we disable ourselves from paying what is equivalent to specie.

Sir, I am asked whether I would go the length of selling these treasury notes for money, and then whether I would have it in specie. I at once say, sell them, and then everybody will know that there will be a choice only between specie and something that will command specie. I say, make your ac-

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counts everywhere in specie or its equivalent. The gentleman supposes that we are to withdraw the amount of ten millions of dollars from the circulation. If we should grasp the silver and shut it up in the treasury vaults, that would be altogether injurious, and the gentleman, therefore, uses a very good argument to-day against what he urged six months ago. He now says, if we withdraw so much specie, it would cause embarrassment; but what did he think of demanding it for revenue? He now says that this treasury note bill is a most necessary step for all the banks. He then saw no inconvenience in demanding payment in specie; it would not embarrass the country, and was the only just mode of collecting the revenue. Let our Secretary of the Treasury be a man of just and liberal policy, addicted to no mere theories, and bound down by no party dogmas, and he will make the disposition of these notes in the market in a few days, disturbing nobody, and giving no occasion for these agitations and alarms; it is the continuing these treasury notes, and rejecting the practice of twenty years for dreams and theories, that creates all difficulties.

But the gentleman asks, is not the Government to use its own credit? Certainly it should; and it is right that, like individuals, it should get money and pay its own debts. It should use it now; but is it a proper use of Government credit to force it, instead of the money, on its creditors? Is it justice to tell its creditors, though you prefer specie or the notes of specie-paying banks, you shall have our credit only? Like individuals, the Government should come up to the standard of the country; and, if it has not the means to pay its debts, then, like individuals, it should raise it by its credit. But it has no right to compel the creditor to receive its promise to pay, any more than individuals have the right to force on their creditors a new promise instead of paying what they owe. The gentleman calls that using credit, but it is using power, and not a use of credit.

And now to go back to his example of the three farmers, A, B, C. The gentleman supposes that the Government authorizes the receipt of the paper of C, so that he may make purchases directly of Government, which A and B cannot do

without indorsed notes at interest, and he says that this is just the case with the banks. I say it is not the case, and that every idea of credit involves time and convertibility ; and if it does not, it is nothing. The notes of the bank are money in effect, and to say that their paper is on time, and that there is merely an exchange of credit, is what no man can say with propriety. Suppose one of your officers in the city of New York sells a treasury note, and he gives you a check on one of the banks paying specie, so that you can go across the street, and get it if you choose, is there any change of credit if you receive the notes of the bank, when you can go at once and get the specie ? It is not an exchange of credit : it is an exchange of credit for money, if you give your note on time, for specie, or the equivalent of specie. This, Mr. Astor, or any other individual would do, if he wished to use his credit for what would give him an immediate command of specie. The terms of the gentleman, therefore, do not stand in relation to each other ; they are, therefore, not just in argument. And there is no analogy between the cases to which he has applied them. In his case of the three farmers, undoubtedly the Government ought to make no discrimination ; and they never should in regard to bank notes, except on the ground that they are equivalent to specie, that they are more convenient, and at the same time equal in value to specie ; and if treasury notes were so equivalent to specie, then it might be proper to place them on the same ground.

Mr. Webster expressed the hope that the Senate would at an early day take into consideration the subject relating to the treasury order. Whatever else was done or not done, that, he thought, ought to be rescinded. Some gentlemen thought it had done good, but could do so no longer ; others thought that it had never done any good ; but all concurred in the opinion that it ought to exist no longer.

Speech on the Collection of the Revenue

UNITED STATES SENATE, May 29, 1838.¹

MR. PRESIDENT, it has been my earnest desire to propose some measure of a useful character, in which it was probable both Houses of Congress might concur. With this view, I moved the amendment to the sub treasury bill, when that bill was before us some weeks ago; and it is with the same object that I have now brought forward precisely the same proposition. I have looked to see what could be accomplished, as well as what would be beneficial; I have considered what was practicable, as well as what was proper; and I have believed, and now believe, that the measure, in its present form, will meet the prompt and decided approbation of both branches of the Legislature. The majority which here showed itself in favor of the resolution yesterday, on the question of engrossment, as well as the decisive vote of the Senate upon the same proposition, when submitted by me as an amendment to the sub treasury bill, leaves no doubt of the opinion of the Senate, and I believe the sentiment of the other House will be found not less decisive.

On the present occasion, sir, I do not intend to detain you by

¹ In the Senate, on May 29, 1838, the following resolution for the collection of the revenue was read a third time:

“*Resolved*, That it shall not be lawful for the Secretary of the Treasury to make or to continue in force any general order which shall create any difference between the different branches of revenue, as to the money or payment in which debts or dues accruing to the credit of the United States may be paid.”

The question being on the passage of the resolution, Mr. Webster made the speech here printed.

protracted discussion, as the success of the measure in this body cannot now be doubtful ; but I wish, nevertheless, to say a few words.

The measure, as I propose it, interferes with no existing act of Congress. It leaves all statute laws as it finds them, and acts only, and acts directly, on the treasury circular of July, 1836, and on the power of the Secretary of the Treasury to issue any such orders in future. This is its single object. When it shall have passed, distinctions and discriminations between different branches of the revenue will be abolished. If nothing but specie will pass at the land offices, then nothing but specie will pass at the custom-houses. There will no longer be one law for a merchant in New York, and another law for a settler in the West. The rights of all will be equal ; and equality, in this respect, is justice.

Sir, I doubt not the measure will effectually answer the end designed by it. It has been suggested that possibly the Secretary of the Treasury might fulfil the injunctions of this resolution, and abolish all distinctions, by requiring specie at the custom-house, and continuing to require it at the land offices. There is no danger, sir, of that. In the known state of opinion, in Congress, and the country, no Secretary can be supposed capable of pursuing such a course. No, sir ; when this resolution is passed, the treasury order soon breathes its last breath. It will not live a day ; and no Administration will hereafter venture on another like it. Such unjust, invidious, and injurious distinctions in the collection of the revenue will not be heard of again in our day and generation. They will be suppressed, indeed, by the force of positive law.

Mr. President, I do not mean to discuss the character or operation of this celebrated treasury order at any length. I must say, however, that, for one, I never regarded it as defensible in principle, even if the Secretary could lawfully have issued it ; because it was unequal and unjust. It created distinctions and gave preferences which no man can justify. It was unjust to the whole West. It was unjust to every man who wished to buy an acre of the public land ; because it withheld from him facilities in making payment to Government, which other per-

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sons, having payments to make at the same time, were allowed to enjoy. And if the order could have been defended, in principle, I still never doubted its injurious effects on the currency and business of the whole country. It was a disturbing cause of great power. It deranged and embarrassed commerce, exchanges, and intercourse. It drew away silver and gold to unnecessary uses, and seriously affected confidence and credit, by its apparent hostility to the banking institutions. It wore a warlike aspect, and its whole operation was unfriendly and annoying.

Its abrogation will produce good in various ways. In the first place, it will do justice, by restoring equality. This of itself is a good. In the second place, it will be of much importance in aiding the resumption of specie payments. The abrogation in this respect will be felt everywhere. It will benefit the East as well as the West. It will quiet fears, inspire confidence, encourage the banks on both sides of the mountains in the efforts to resume. They will look on Government with less of apprehension and fear. They will regard this measure as a proclamation of peace, and will trust that they are no longer to be pursued with hostile intentions and hostile acts. And, lastly, sir, the passage of this resolution will make a favorable change in the state of trade and business all over the country ; and it will particularly relieve the West. Notwithstanding what has been said to the contrary, I am confident the whole West will hail it with gladness of heart. The people of the West will regard the repeal of the specie order not only as a proof of the justice of Congress, but also as a welcome harbinger of better times. They will view it as the first step in the return of former prosperity.

There are other things, sir, which ought to be done, doubtless, and which might be done, by way of following up this measure. To these, or some of them, I intend to call the attention of the Senate in a few days. In the mean time, I hope to see this resolution become a law, without delay.

Mr. President, if this measure shall succeed, we shall be brought back upon the resolution of 1816, with the modification which this will produce.

Now, sir, there has been so much misconception in regard to the object, character, and history of the resolution of 1816 that I must ask the indulgence of the Senate while I make some observations on these points.

Sir, there would seem to be no necessity for mistake in these particulars. The state of things which led to the adoption of that resolution must be well remembered by all, and here are six or seven of us, I think, now in the Senate, who were members of Congress at the time when that resolution was adopted, and bore a part in the transaction. Its history is this:

When Congress assembled in December, 1815, the President, Mr. Madison, drew our attention to the state of the currency by those passages of his message which I have so often quoted and referred to, during the last session and the present, as well as on many previous occasions. Following the President's recommendation, Congress set itself vigorously at work for the reformation of the currency, then in a most deplorable state. But before describing the state of the currency, as it then existed, allow me, Mr. President, to go back still a little farther, and trace the previous history of this branch of our public affairs. That history requires, and will well repay, attention.

The present Government, sir, went into operation in 1789, and the first act regulating the collection of duties was passed on the 31st day of July, in that year. That act declared that the duties and fees to be collected by virtue of its provisions should be paid *in gold and silver coin only*; and fixed the rates at which the respective foreign coins should be received. Here was a direct requisition for *gold and silver exclusively*. Well now, sir, how was this understood by the Government and the country? There were then a few State banks in existence, issuing bills, and redeeming them on demand in specie; and it is beyond all doubt that, in the neighborhood where these banks existed or where their bills circulated, those bills, being thus bills of specie-paying banks, were received for duties as fulfilling the demands of the statute. The number of banks soon increased, and went on increasing, and the bills of all were received if they were in good credit, and paid specie for their paper on sight. All this, sir, was done with the full knowledge

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and approbation of the Government; and it was done on the plain and simple ground, and could be authorized or justified on no other, that bank notes, for which specie could be had on demand, are the representatives of specie, and are its equivalents; that they are, indeed, but so many orders to go and take the specie when you wish it; that they are the instruments with which you take hold of it when you need it. And as Government must keep its money somewhere, and naturally would use safe banks for the purpose of keeping it, whenever such banks could be found, it seemed absurd and ridiculous to compel the merchant to bring his hard dollars from the bank to the custom-house to pay his bond, for no purpose but that they might be sent back again from the custom-house to the bank. Whatever the collector received, he credited to the Government as cash. It might be gold and silver, it might be a merchant's check on a bank, it might be bank bills — all went into one and the same account as cash.

In 1791 the first bank was established, and its bills were made receivable, in payments to Government, by a positive provision in its charter. But even this, so far as I know, did not prevent the receipt of the bills of other specie-paying banks in places where such institutions existed. Thus things went on during the continuance of the charter of the first bank. That charter expired in 1811, and from that time, therefore, there was no paper in circulation but that of State banks; and this paper was everywhere received, if the bank was in credit, and paid specie; and allow me to repeat, sir, that it was received, as being a substantial compliance with the act of the 31st of July, 1789. It was received as cash, and credited as cash. This state of affairs continued until after the declaration of war against England, in 1812. So that you perceive, sir, that for five and twenty years the officers of Government everywhere received, when offered, the notes of specie-paying banks as specie, and that this was done without complaint by anybody.

But now, Mr. President, a great and important change took place. Within a year or two after the commencement of the war, all the banks south of New England suspended specie payments. Their bills and notes were therefore no longer equiva-

lent to gold and silver, and a general crash of the currency ensued. Bank paper immediately became depreciated, and this depreciation increased more and more as we went from North to South. The exchange between Washington and Boston was, at one period, as high as twenty or twenty-five per cent. Nevertheless, sir, even in this lamentable state of things, the Government continued to receive bank notes, depreciated as they were, for duties and taxes. It also contracted heavy loans, and in many instances received the proceeds of its sales of the stock of such loans in this same bank paper *at par*. All this was justified on the ground of the absolute necessity of the case. War, pressing on the country with all its demands and all its evils, created an exigency, in which there seemed no option, since there was no national institution, but to receive the paper of State banks, although those banks had ceased to redeem their bills by the payment of gold and silver, and their paper, therefore, was enormously depreciated.

Well, sir, peace came in the early part of 1815 ; but still the banks did not resume. When Congress assembled in the fall of 1815, the suspension still continued, the depreciation was not remedied, and the treasury was still receiving the degraded paper of State banks. Now, sir, as the war had ceased, it was obvious that this mode of collecting revenue ought to be no longer tolerated. Several enormous evils flowed from it. The first was that Government was not sure, and could not be sure, of any fixed revenue or income. It laid taxes and duties ; but what then ? For these taxes and duties it got nothing but irredeemable and debased paper money ; and the fate of the old Government under the Confederation, in continental paper money times, was already staring Congress full in the face. So much for the distress caused to Government.

The other intolerable evil was the inequality which was produced between citizens in different places. At Baltimore duties on goods imported were received in notes of the Baltimore banks, although those notes were ten or fifteen per cent below the value of gold and silver, while at Boston, at the same time, nothing but gold and silver, or their equivalent, specie bills, would be taken at all. In the mean time, the general mischief,

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the great and overwhelming evil of a depreciated and discredited currency, was afflicting the whole country. Every interest felt its baneful effects. Commerce stagnated, manufactures could not revive, and business of all kinds was embarrassed and distressed.

This, sir, was that deplorable state of the currency which I have already said existed at the close of 1815 — a state of the currency which had called forth so earnest a recommendation to Congress from the President, and which Congress set itself at work, with so much zeal and resolution, to reform.

As I have observed on former occasions, sir, Mr. Madison's message, so far as it related to the subject of the currency, was referred to a select committee in the House of Representatives, and the honorable member from South Carolina (Mr. Calhoun) was made chairman of that committee. His first measure was to establish a bank; and in that measure he succeeded. The law creating the late Bank of the United States was approved and signed by the President on the 10th of April, 1816.

But the establishment of a bank was not supposed to be all that the condition of the country required. Something further, it was thought, was indispensable to the restoration of the currency. Accordingly, the honorable gentleman brought forward a bill "for the more effectual collection of the public revenue in the lawful money of the United States." To some of the provisions of this bill I alluded on a recent occasion. The bill was much discussed, and much opposed. Various amendments were made to it, and others proposed, in the course of its progress. In the shape which it finally assumed, I supported it, cheerfully, because I thought it would answer the substantial purpose designed by it, that of aiding essentially in the restoration of the currency. It passed to be engrossed on a very close vote, but the next day it was rejected, on the third reading, by a majority of one. This, sir, took place on the 25th of April, and Congress had already agreed to adjourn on the 30th of the same month. Here we were, then, within five days of the end of the session, and we had done nothing at all to correct the enormous evils of a paper-money currency, except to charter a bank. It was quite uncertain when this new bank would go

into operation, and still more uncertain whether its influences, unaided by any other measure, would be able to compel the State banks to resume specie payments, and so make a reform in the currency. It appeared to me that we were about to break up, leaving one most important object unattained. I felt that a crisis of a very delicate character existed. In this state of things, divided as opinions were, and embarrassed as the country was in all its interests and pursuits, I felt it to be my duty to attempt something, which might probably be carried, and which, if it prevailed, should rescue the country from the evils which oppressed it; and I lost no time in making the effort. The day following that on which the bill which I have mentioned was lost on its third reading, that is to say, on Friday, the 26th of April, I introduced my resolutions, for there were originally three of them, the first two, however, being merely declaratory, and in the nature of a preamble. These two I withdrew, and the third and main resolution received its three readings *in one day*, passed, and was sent to the Senate. The Senate acted upon it on Monday, the 29th, amended it, and returned it to the House. On Tuesday, the 30th, the House concurred in the Senate's amendment, on the same day the President approved the resolution, and on the same day, also, Congress adjourned.

But now, sir, let me be a little more particular. The resolution, as I introduced it, made no provision for the receipt of any bank bills whatever. It said nothing of the notes of specie-paying banks. I did not suppose that any provision was necessary on that subject, as such bills had always been received under the existing law. Nobody had objected to receiving them, and I took it for granted that the collectors would continue to go on as they had gone on; that they would receive, as matter of course, the bills of specie-paying banks, as being equivalent to specie itself, and credit their amount to Government as cash. The honorable member from South Carolina, however, or rather some friends of his, suggested that there might be doubts about this; and that, unless the reception of the bills of specie-paying banks should be provided for, the collectors might perhaps feel themselves bound to reject such bills.

I stated my opinion, that no such thing was likely to happen, and that the amendment, therefore, was not necessary. The honorable member said his own opinion rather was, that the amendment was not strictly necessary ; that he had moved it in order to satisfy the doubts of friends, and, as others seemed not to think it necessary, he would withdraw it ; and he did withdraw it. The resolution passed the House, therefore, with no provision whatever respecting the receipt of bills of specie-paying banks.

When the resolution was taken up in the Senate, the same doubt was suggested which had been stated by the gentleman in the House ; and one of the members from Tennessee (Mr. Campbell) moved an amendment similar to that which had been moved in the House by the honorable member from South Carolina ; that is to say, he moved to insert the notes and bills of specie-paying banks among the things which might be received in payment of debts and dues to Government. The Senate adopted this amendment, sent the resolution, thus amended, back to the House, and the House concurred.

This, Mr. President, is, I believe, a true and exact history of the resolution of the 30th of April, 1816. And, sir, the great and main object of the resolution cannot be doubted. It must be obvious to everybody, that its chief purpose was to put an end to the reception of paper money in payment of debts to Government. It meant to reject all bank notes which were not payable and paid in specie on demand: The reception of such notes, and the fact that they constituted the currency of the country, were the great evils then existing ; and the correction of these evils was the distinct and paramount object of the resolution. The consequence of such rejection, it was expected, would be, that the banks would make a strenuous effort to resume payment by the 20th of February then next, that being the day after which no bills of non-specie-paying banks were to be received. For the accomplishment of this great object, much was hoped for certainly from the bank, then recently established ; but, as I have already said, it was impossible, at the time, to foresee how far any efforts of the bank might prove effectual. Sir, we were not disappointed. The resolution did

its work. Under a wise and prudent administration of the Treasury Department, the great end of resumption was accomplished, the currency of the country was restored to a sound state, and it continued in that state, and no man found just reason to complain of it, on the whole and as a general system, until the removal of the deposits in 1833.

Mr. President, this recital of unquestionable fact shows that public officers, with the approbation of the Government, have received the notes of specie-paying banks as money ; that they did this, habitually, as well before the passage of the resolution of 1816 as afterwards ; in short, that debtors to Government paid their debts as individual debtors paid their debts to other individuals, that is to say, by specie, by checks, or drafts on banks, such as are used by merchants, or by the notes and bills of sound specie-paying banks, at the pleasure of the payer. Nor do I remember, sir, that, until the late general suspension, any loss has occurred to Government from the receipt of such bills. If any instances of loss have happened, they are not within my recollection.

Mr. President, on this, as on former occasions, gentlemen have referred to remarks of mine, made in the House of Representatives, on the passage of my resolution. They say those remarks prove me to have been a staunch friend to a sound currency, a hard-money man, an inflexible and uncompromising enemy to paper money. I hope, sir, that all this is true. Indeed, I know all this to be true. It is the character which I desire to sustain, and have always labored to sustain. I maintain it still, and shall never surrender it while I retain my understanding. But, though a friend to sound currency, though a hard-money man, though an implacable enemy of paper money, I did not, either at that time, or ever, feel bound to reject all use of bank circulation. I supposed, of course, that the bills of specie-paying banks were still to be regarded as the representatives of hard money, more convenient for general use than the thing itself, and that, in this respect, there was to be no departure from our established practice. In all this, I thought and spoke then just as I think and speak now. The sternest hard-money man in Congress, if there was one sterner

than myself, which I do not believe, did not propose the entire disuse of bank circulation. Nobody thought of such a thing. Sir, the paper money which I so much reprobated was irredeemable paper, paper not payable in specie on demand; whether it were Government paper, or the bills of banks which did not pay specie, or whatever else it were, I held it then, and hold it now, to be mere, sheer paper money, dangerous, worthless, and abominable, both as a medium of payment to Government and as a currency. As I thought in 1816, so I think now. The most rigid opinions which I then advanced, I still adhere to. I am against paper money in all forms, and I am in favor of nothing but gold and silver, and such bank bills as may be converted into gold and silver at the will of the holder. When we speak of the legal currency of the country, we mean gold and silver, because gold and silver constitute the only legal tender, and are the only lawful standard of value. But when we speak of money, in the general sense, we mean gold and silver, or that which represents them, and is equivalent to them. Bank notes are regarded as money, not only in the general understanding of the community, but in many instances also by the law. In cases of bankruptcy, in cases of legacies, and in many other cases, the judicial tribunals hold such bills to be comprehended in the general denomination of money. What foundation is there, therefore, for denouncing any one as an enemy to a sound currency, who thinks it proper and convenient for Government, as well as individuals, to make the ordinary use of bank circulation? With how much truth can it be said that he is a paper-money man, who only wishes that a practice should be continued which began at the beginning, and has lasted through our whole history — a practice from which the people have derived much benefit and advantage, and in consequence of which, so far as I know, Government has sustained no loss nor injury, except what has arisen from the events of last year?

The true legal construction of the resolution of 1816 is a question which I shall not now discuss at any length. My opinion on that point differs from that entertained by the Senate. As the bills of specie-paying banks stand in the resolution

with the legal currency of the country, treasury notes, and bills of the Bank of the United States, and as all are under the influence of the very same words, I cannot but think that it is the duty of collectors to receive either, when offered. It is said, however, that the resolution only *permits* the receipt of these bills, and that public officers may still refuse them, if they see fit. But it is to be remembered that the receipt of these bills is *authorized* by the very same words which *reject* the receipt of the bills of non-specie-paying banks. How, then, is the injunction to be regarded as imperative for one purpose, and permissive only as to the other ?

No doubt, sir, there are certain limitations and qualifications imposed by the very nature of the case, and which must be respected. The bills, to be receivable, must be bills of *specie-paying* banks, and the collector must of course know them to be such. He must be acquainted with the general character of the institution from which the bills issue ; and, perhaps, it would not be reasonable to expect him to possess this knowledge in relation to any other banks than such as were in his immediate neighborhood, with whose character and daily operations he was conversant. Certainly he would not be bound to act upon vague and general information respecting distant institutions which were unknown to him. With these necessary limitations, I cannot but think the resolution imperative. The decision, however, has been the other way, and I acquiesce in it. Both Houses of Congress have acted upon the supposition that there still exists a discretion in the Secretary of the Treasury. My present purpose is, therefore, to restrain and control that discretion, and to put an end to it in one important particular.

The constitutionality of the resolution of 1816 has been denied ; but I cannot doubt that Congress may authorize the reception of bank bills, if it chooses. To be sure, all taxes and duties must be uniform, and therefore must everywhere be paid in a currency of uniform value. But the value of *convertible* bank notes is just as uniform as the value of specie itself. It appears to me, sir, that on these subjects we surround ourselves with ideal difficulties, and embarrass ourselves by reasoning

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upon facts which, practically, have seldom any existence. A better knowledge of actual transactions, and of the usual modes of business, would often very much improve our judgments.

On all these subjects, we are to remember that, ordinarily, the Government has in its own hands neither specie nor bills; that its funds are in the keeping of somebody; that, after all, they are but credits in account; that they exist, not in specific masses of gold and silver, nor in specific parcels of bank bills, but in balances due from collectors and receivers; that successive collections are carried as new credits to these accounts; that, as drafts are received, they are paid in any manner that suits the holder, and charged in the account. All persons acquainted with such affairs know that, of the whole amount received at the custom-house, very little is paid otherwise than by merchants' checks, by means of which the proper amount is transferred from the account of the person paying to that of the collector, either in the same bank or some other. Ordinarily there arise but three occasions for the direct use of specie in large amounts: one is, to adjust balances between different cities; another occurs when the state of foreign trade requires an exportation of specie to adjust national balances; and the third is, a demand for gold and silver for carrying on some particular branches of commerce, such as the China trade formerly was. These uses of specie do not, of course, include that portion of gold and silver which is intended to pass from hand to hand, and to form part of the general circulation. I speak only of the occasions in which specie may be called for in masses for the purpose of showing that occasions for such calls are not frequent. Thus we have seen that, in the four or five months that we have been debating here, upon theories and abstractions, upon schemes and projects, several of the States have negotiated large loans, realized the proceeds in specie or its equivalent, conducting all their operations successfully through the agency of skilful men, and making no commotion by violent movings of the precious metals. I really wish, sir, that we had a little more of this quiet and practical wisdom. We might well exchange for it some part of our elaborate and long continued theoretic reasoning on general principles.

Mr. President, it is the fashion, nowadays, to denounce all banking institutions, to call them little aristocracies and odious monopolies, and to find in them causes sufficient for the overthrow of the Government, and the destruction of popular liberty. It is the temper of the times to indulge in the ebullition of this spirit. Banks are separated from the people; they are supposed to have been created for their own benefit only; to have been, from the first, enemies of the public good, and to be nuisances which the people should get rid of as soon as possible. Now, sir, all this is very unlike the feeling which prevailed in 1816. At that time banks were regarded as institutions which the people of the States had established for their own convenience. We intended, indeed, that they should perform their duty, but we meant, at the same time, to aid them in the performance of it, as far as was in our power. The whole temper and tone of Government towards the banks were then wholly unlike what now prevail. Look to the history of the administration of the Treasury Department, recur to Mr. Crawford's correspondence; you will see a disposition everywhere to encourage the State banks, to give them assistance, and to inspire the community with confidence in them. There was, indeed, sir, one proposition made to Congress at that period, which contrasts strikingly with opinions and sentiments now ardently supported. The honorable gentleman from South Carolina himself brought forward a measure for an issue of treasury notes to the amount of fifteen millions of dollars, to be loaned to the banks, on such security as the Secretary of the Treasury might approve, reimbursable in annual instalments. This was done on the avowed principle of lending to these institutions the support and credit of Government, in order to enable them to resume payments and restore the currency. The proposition did not succeed, but it met with considerable favor. It was supported on the ground that the banks were but institutes created for the benefit of the people, and that, in the existing state of things, the community would be benefited by whatever should enable them to redeem their depreciated paper, and thus restore the currency of the country. How different, sir, how widely different, is all this from those loud and vehe-

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ment tones of rebuke, reproach, and denunciation which have filled, and almost shaken, the walls of these chambers for months past!

I conclude, Mr. President, by repeating the expression of my perfect conviction that the passage of this resolution will be productive of much good; that it will act powerfully on the great object of resumption; and that we shall see its effects immediately. So soon, sir, as it shall have passed, I shall invite the attention of the Senate to other measures which will be necessary, as I think, in order to give it full effect.

Speech on the Maine Controversy

UNITED STATES SENATE, February 27, 1839.¹

I HOPE, Mr. President, that this rumor² will turn out to be incorrect. It would be melancholy, indeed, if it should be true that a hostile meeting has taken place, followed by such consequences as have been stated. But not at all under the influence of any impression from that rumor, I will make a few remarks on the general subject, and on this communication from the executive Government: and painful as it is, I must say that I cannot approve of the conduct of the Executive on this important measure since the last session. I will even go a little beyond that, and say what I did not mean to say till the certainty should be developed whether there would be any collision between the parties, because I do not desire to make this controversy with England a matter of party. At the last session, and whenever there was any occasion, I endeavored to set forth the right to the territory as our own, and not to complain of any Administration for the manner in which that right had been either neglected or enforced. But there are two or three things that ought to be stated; and without going at this time further back than the last session, I wish to know what reason has been assigned to Congress why this negotiation has not been pressed to some practical result, or finally broken off. As to the expression of the opinions of Congress in both its branches, nothing could be more decided than the resolutions of the last year. And what do we learn to have been done in consequence of those resolutions? I ask if there has anything

¹ In the debate on a message from the President, together with various other documents regarding the Maine and New Brunswick difficulties.

² That there had been a collision in the disputed territory.

been communicated to Congress at this session in the form or shape of a reason why this matter has not been brought to some sort of a conclusion, or made some degree of progress? When we ask what onward steps have been taken, the answer given to the question is, that nothing has been done; but why, we are not informed. And while nothing has been done here or in London, Maine has undertaken to examine the question whether the lines of the treaty of 1783 are an ascertainable boundary. She has explored the territory by commissioners, and her commissioners come back and tell us that there is no more difficulty in running that line than any others which run due north from a given point. They have found the treaty lines (the highlands) to be as visible and tangible as the Alleghany Mountains, or any other highlands, though, of course, less elevated; so that the boundaries of Maine are as clear and as easily ascertained as other lines of division in the country. And yet a negotiation has been going on year after year; and when we ask what has yet been done, even down to this hour, we learn that nothing has been accomplished; that, to all appearances, the dispute is as far from a termination as ever.

And now what Maine has done is to be superseded, New Brunswick and Maine are to withdraw, and all things are to return to the state in which they were *ante bellum*, and then we are again assured there is to be a speedy settlement of the controversy by negotiation! And so said Spain on a certain occasion, when she did not settle the question for fifty years. Sir, this important matter cannot go on, or rather it cannot stand still, in this manner. Maine cannot be kept, and ought not to be kept, thus in a state of dissatisfaction and neglect.

Sir, I think this matter must be settled, and that it will not permit delay; and I must say that a strong Administration here, and another in England, might long ago have brought it to a close.

The time must come when, if the controversy cannot be terminated by some sort of negotiation, it must be settled otherwise. I believe our right is clear; and although I am willing to concede much for peace and good neighborhood, I am not

willing to delay a final adjustment indefinitely, or at the hazard or in the face of the certainty of border conflicts. I do not wish that Maine should take possession of the territory. The controversy is ours. But if this negotiation is to be prolonged and delayed, postponed and put off, without reasonable prospect of ever seeing an end of it, then I am for ascertaining the treaty boundary by an examination of our own, and, if we are satisfied we are right, for making that boundary the line of our possession, and seeing whether we can hold it. When negotiation becomes mere procrastination, and serious dangers in the mean time threaten, a more decided tone ought to be assumed. Depend upon it, sir, the peace of the country is more endangered by these unnecessary and unjustifiable postponements and delays, than it would be by holding a more decisive language, and manifesting a more resolute spirit. I do not believe there has yet been collision; I hope there will be none. But I do not wish to see Maine humiliated or disgraced. I believe that if something of her own spirit and feeling had pervaded us here, we should have now been through the controversy. There is yet, I have no doubt, time for pacific adjustment; but England must learn that she has nothing to gain by delay. Delay, while it can benefit neither party, every day endangers the peace of both.

I only wish further to say in regard to Maine, that she did obtain from Congress, at the last session, a unanimous concurrence of opinion in both branches strongly in her favor, on the question of her right to the territory. Further negotiation, however, was still contemplated; and now, at the end of another year, she finds that not one single step, not an inch of progress, has been made. I do not blame her for being both dissatisfied and excited.

It is to be considered also that, in the mean time, Maine has established, to her own entire conviction, the truth of what we have been contending for; that is, the perfect practicability of ascertaining the treaty boundary.

Mr. Webster thought that if a higher and more energetic tone had been held by our Government in the negotiations on this matter, we would stand upon much more elevated ground

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at present. He was willing, for his own part, to assume his share of the responsibility of voting to run the line of 1783, and to defend it when run—and to vote it to-night. He hoped that those who had the lead in the administration of our affairs would tell the English Government that this matter must be settled; that if not settled by the fourth day of July next, we will run the boundary line according to the treaty, and we will occupy the country, and then remove us if you can.

Further Remarks on the Maine Controversy

UNITED STATES SENATE, March 1, 1839.¹

CONCURRING, Mr. President, in the general spirit of these resolutions, I should be glad if there could be some modifications made in the latter branch of the fourth and last, so as to insure for it my own approbation, and I should hope the unanimous approbation of the Senate. I cannot vote for it as it now stands. I must say that, in my opinion, there are well-founded objections against it. I concur with the Senator from Missouri (Mr. Benton) in thinking that its sentiment is not constitutional.

Let us see, sir, how this fourth resolution stands. Its words are :

“Resolved, That should the British authorities refrain from attempting a military occupation of the territory in dispute, and from enforcing their claim to exclusive jurisdiction over it by arms, then, in the opinion of the Senate, the State of Maine ought, on her part, to pursue a course of similar forbearance. And should she refuse to do so, and determine to settle the controversy for herself by force, the adjustment of which is intrusted under the Constitution to the Federal Government, in such an event there will be no obligation imposed on that Government to sustain her by military aid.”

To the latter part of this resolution I entirely object. It is not fragrant of the true spirit of the Constitution of the United States. It seems to imply that, in certain contingencies, we

¹ In the debate on the resolutions reported by the Committee on Foreign Relations on the subject of the difficulties between Maine and New Brunswick.

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shall leave the State of Maine to carry on a war alone against England. It says, that if she shall not act as we recommend, but shall make use of her own force, we will not aid her. But will that fulfil our whole constitutional duty? Gentlemen say that they will not suffer all the rest of the States to be dragged into a war by Maine. Very well; but, then, neither must Maine herself be allowed to go to war, unless for reasons which shall induce this Government to go to war also. We need not re-enact the Constitution. We need not declare that no State can make war with a foreign nation. Hostilities, commenced by a State, are not lawful war. If a State declare war, it is still no lawful war, and it is, unquestionably, our duty to repress all such hostilities, until this Government is at war itself. It is wholly inadmissible to suppose any case whatever, however contingent, or however extreme, in which we may be quiet here, without dereliction of our duty, while one of the States is in arms against a foreign nation. No supposable or imaginable case would allow such a state of things. Yet this seems to be implied in the last branch of this resolution. Hostilities carried on by State authority are no more lawful than irregular invasions by multitudes of private and unauthorized individuals. Unquestionably the duty of this Government is to prevent all such occurrences.

We, therefore, must set out, in the consideration of such subjects, with the conviction of this truth, that no State has a right to make war for itself any more than it has to make war for the whole country; or, as has been expressed, to drag the other States into it.

These resolutions were of course drawn up hastily, as time has been short.

MR. BUCHANAN. They were not drawn up in two days.

I meant a compliment to the committee; but if gentlemen reject it, I will take it back. [Laughter.] There may be a state of things by which Maine may be involved in hostilities; and shall we then keep hands off? Shall we neither repress those hostilities, nor make the war our own, but leave her to fight out her own quarrel, in her own way? Sir, what American

statesman can maintain such doctrines? This cannot be. We must prevent the war, or carry it on ourselves. And we cannot constitutionally declare by a resolution that we will or will not give her the military aid of this Government. For what is implied in that? That she may go on, and make a little war of her own, in which we may or may not take part, as we shall be advised. This, I repeat, is the constitutional doctrine, fairly to be inferred from this latter branch of the resolution; and I again say, that it is a doctrine which I, for one, repudiate altogether. Maine is not our ally; she is part of ourselves. In whatever relates to our foreign relations, she has no capacity for separate action, and can neither make war nor make peace for herself. If she is invaded, she may repel that invasion, and it will be our duty to hasten to her aid with all our power. If she be not invaded, the power and the duty of vindicating her rights against foreign nations devolve on this Government; and she herself, in the mean time, is to keep the peace.

But I have another objection to this resolution. It seems to carry an imputation against Maine. It implies that there is reason to fear that she may violate her constitutional duty. Now, I am not disposed thus to censure her in advance. I will impute to her no such purpose. Where is there any evidence that she "*determines to settle the controversy for herself by force,*" or that she is likely to come to any such determination? Thus far she has made no such attempt. Why, then, should we rebuke her beforehand? Why suppose a case, and that a very improbable one, for no purpose but that of saying that, should it happen, we will reject her, and cast her off? This reproach, in advance, is unnecessary and unjust.

Why is it not enough to say, sir, that we will support the peace of the United States, that we will protect the interests of all the members of the Union, and vindicate their rights to the soil; that when there shall be a necessity for war, it shall be declared and waged by the whole power of this Government; but that, while there is peace, it shall be maintained by this Government? Sir, I repeat again, that there can be no possible state of things in which this resolution would be constitutional and just. If there is an invasion

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of Maine, she may repel it, and we must support her ; and if Maine invade her peaceable neighbors with hostile forces, it is our duty to be there and prevent such invasion.

Sir, I concur cordially in the peaceful spirit of these resolutions ; I would not hold out encouragement to acts which might implicate the peace of the country. But the case made in this fourth resolution is not actual ; it is all supposititious. Maine has, as yet, done nothing which ought to be regarded as hostile. Why, then, shall we presume that she will not still do her duty ? Is it not a matter of proper respect to the State to take it for granted that, without an admonition or a rebuke from us, she will confine herself to those defensive measures which everybody knows she may rightfully exercise ? She has manifested no disposition to maintain exclusive jurisdiction by military occupation ; yet that is just the predicament in which this resolution supposes she may hereafter place herself : but why get up a supposed case, in order to chide her, and to threaten her with being left to her fate ? I should be glad, Mr. President, to be able to vote for all the resolutions ; but I cannot vote for the last, unless this latter clause be struck out.

The Public Lands

UNITED STATES SENATE, January 30, 1841.¹

MR. CALHOUN having completed his reply, Mr. Webster addressed the Senate nearly as follows :

I do not propose to renew the argument, I wish merely to prevent any misapprehension as to my own opinions, and to add a word or two in reply to the remarks of the Senator from South Carolina. That honorable member expressed a political maxim of great importance and of practical application, — and though it be somewhat commonplace, it has its foundation deep in the nature of government and of men : viz., that it is the part of wisdom to remove the ground of complaint rather than to prevent men from complaining. He refers to a modern authority for this remark, as having fallen from one of the wisest of men, Edmund Burke. But a greater than Burke has said it before him. It was the saying of Bacon that it is wiser to remove a subject of complaint among the people than to convince them by argument that they ought not to complain. It is in the spirit of this maxim that I support the principle of Distribution. Because, who are the com-

¹ From a manuscript in Mr. Webster's handwriting in the New Hampshire Historical Society. In the second session of the twenty-sixth Congress Mr. Benton of Missouri introduced a bill for the establishment of a permanent prospective pre-emption law in favor of settlers on the public lands, and Mr. Crittenden of Kentucky moved to recommit the bill, with instructions to report a bill for the distribution of the proceeds of the sale of the public lands among the States. Mr. Webster, Mr. Clay, and other Senators took part in the debate, and Mr. Calhoun spoke several times. The speech by Mr. Webster here printed, is evidently a reply to Mr. Calhoun's speech of January 30, 1841. See Calhoun's Works, Vol. III. page 583. Mr. Webster's speeches in the debate were not reported in the Congressional Globe.

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plainants? On which side stand Massachusetts, and the old States almost unanimously? They say that a right has been created by Virginia in their favor — that it has been neglected by Congress — and that Congress may fulfil their expectations without inconvenience, and complain that we do not. Nor is this complaint made only by the Atlantic States unanimously, but by a majority of the people of the new States also. The people are unanimous on this side the mountains, and there is a majority of those on the other side. I am of opinion, under these circumstances, that it is easier to remove the cause of their complaint than to reason them out of complaining.

I will now re-state strictly, the Constitutional ground on which I place this argument. Congress has by the Constitution the right to dispose of the territory of the United States. I call it an unlimited right. The Senator from South Carolina says it is not. What is the limit? When we construe a legal instrument and say it is unlimited, we mean that there is not any limit in the words of the grant or in some other part of the instrument, otherwise there can be no such thing as an unlimited grant in the world. Where does the honorable member find a limitation? He says it is limited by the nature of things. Undoubtedly: but who is to be the judge? Will it not come to this, that the power is to be limited by sound discretion alone? The member states extreme cases, such as colonization, abolition, etc., and he asks where is the grant of unlimited power? He knows too much not to know that this is a false mode of reasoning. He might as well urge it against all parts of the Constitution. There is in that instrument a grant of the war power; where is the limit? Congress may declare war whether it be defensive or offensive, etc.

Let me put a case to the honorable member. He asks if there must not be a limit in the case of colonization. Doubtless there must. Suppose an administration chose to declare war in order to keep a man in office who is in office against the manifest interest of the nation — or a war to overturn commerce in order to gratify the personal hatred of the head of the Government. Has Congress the right to make such a

war ? It has not. Where then is the limit ? — in the nature of things, in the discretion of Congress. Congress has power to regulate commerce among the States, — to regulate it how ? There might have been, before that gentleman came into the House of Representatives, a law to shut up New York harbor for an unlimited time. In most cases, unless from the most urgent circumstances, such a law would have been an abuse of the power entrusted to us, but the law was submitted to, and it was held to be good by the judiciary. Here the power was limited by the nature of things. Take another illustration from the gentleman's own argument. He says there is power in Congress to grant these lands to the new States, or at least to give away thirty-five per cent of their value, retaining sixty-five per cent. Suppose, instead of this, we should give away sixty-five per cent and retain thirty-five : or suppose we should retain ninety per cent and give away ten. It is a question of mere discretion ; there can be no limitation save in the justice, honesty, and common sense, in other words, in the discretion of Congress. The Bill (Constitution) says we may make "needful regulations" respecting these lands. Can we therefore give it away for a cent an acre ? Are we tired of it ? Can't we go up to sixty-five cents ? And does not this show that where a grant is unlimited in terms its limitation must rest only on the discretion of the grantee ?

If there is any other limit, he is called to show it. He says that certain extravagant things cannot be done. I say there is no limit to what may lawfully be done but the exercise of a sound discretion.

The gentleman says that even admitting the argument from the deed of cession, still it falls short of what has been called "Clay's Land Bill," that this argument covers only a part of the public domain, while his bill embraces the whole.

I said that Congress has power to raise revenue from two distinct sources ; and may raise it from either. What may we regard as a proper guide to our discretion ? May we look to the cession by the States ? In the participation of power which exists between the general and State Governments may we not look to a question of convenience ? May we not

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look at the actual state of things in the States? May we not have regard to these things in order to guide our discretion?

I may say with great truth that I hardly imagined that a serious question would be made as to the soil of those States which Congress had bought and paid for. The whole difficulty lies in the first step: if we had power to purchase Louisiana and Florida—if we could give five millions to purchase it out of a fund derived in part from the proceeds of the public lands, surely we may distribute the proceeds as it pleases. If Congress can buy the land, it may afterwards dispose of it. It became public territory by the fact of the purchase. We stipulated with the French and the Spanish governments that the inhabitants should be incorporated with the people of the United States: but if Government had power to purchase, it has the power of sale. If it was lawful to purchase, might not Congress have sold the whole of it? or given it all away? Show me the power to purchase Louisiana and Florida, and I will show you the power to sell the land.

There are one or two other points I will notice, and then relieve the Senate.

The gentleman justifies the policy of his own measures of cession of the public lands and says that if we object to the word "cession" he will alter to the word "disposition," and he says that the cession he proposes is not a gift, because we shall derive great benefit from it by the settlement of a great and difficult question which is perpetually recurring here. This is a just ground of proceeding. We propose distribution on the same ground. We urge it in order to quiet the whole country by doing equal justice to all the States. Our object is the same. The only question is one of expediency. It touches no constitutional question at all. It is a mere difference of opinion as to the best mode of giving quietness to the country. He thinks it will be best to put the lands in the hands of some of the States: we are in favor of dividing it among them all. If the one measure trenches on the Constitution so does the other. I have not said that either does.

The honorable member supposes we shall create great agitation and fill all the fountains of corruption throughout the land,

and he asks to whom do we give the proceeds we propose to distribute? Not to the people of the States but to the Legislatures:—to a mere majority in those Legislatures:—to a dominant party and their leaders.

But how does he himself propose to give the whole domain to the nine new States? does he not give it to the Legislatures? to a dominant party in the Legislatures? to the leaders of that party? and does he not propose a far deeper game by setting so large a stake to be played for? I wish when the gentleman speaks of the danger of corrupting a majority of the State Legislatures that he would look at the obvious consequences of his own measure. It strikes me that the danger will be infinitely greater to place this entire body of lands in the hands of a few and leave the rest of the Union smarting under the injustice, than to distribute its proceeds equally among all the States. We must, after all is said, trust majorities: there can be no such things as republican government without. Majorities may be at times very imperious and even oppressive, but he who is against trusting majorities is against republican government. We must take our chance for it. How are we here? Are we not all sent to this chamber by majorities? and often in great political heats? often by mere parties in the Legislatures of the States, to which there are no corresponding parties among the people? Many Senators come here by the vote of State majorities when there is no reason to believe that they are here by the voice of the people. But what of that? How can the people act but through the majorities? We must take our chance for the result, or give up our Government altogether.

Among the evils which the honorable member supposes are likely to arise from distribution is the greater scattering of the people which it will occasion. He says they will go on and go on till they reach the Pacific. I thought we had arrived at a point where this must stop. We have solemn treaties with the Indians which are as irrevocable as they can be made. We have touched the utmost point to which our pioneers can advance. Have we not told the Indians by all our votes in ratification of treaties that the land set apart for them beyond

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the westernmost States is never to be taken or encroached upon? I had hoped that all their sacrifices and all our harsh (I will not say cruel) treatment of them in removing them from the ancient homes of their tribes had been compensated by giving them the solemn faith of the nation that there they are to remain. If we do not keep our faith with them in this we shall command and deserve no national respect.

I rose, as I said, to state the constitutional ground of this question as I understand it. I do not wish to be drawn into the questions which have arisen between the Senator from South Carolina and the Senator from Kentucky. I go on the power in the Constitution to dispose of the public lands, under a general restraint, I admit, from the nature of things; that is, from the exercise of the best discretion of Congress: and that, according to my opinion, in the exercise of that discretion we may look at the clear original equality of the States from the terms of the grant.

This calls me to say a word as to what was the intent of the other clause in the Constitution: viz., that nothing in the instrument shall be construed to the prejudice of the United States or of any of the States. It is connected with this land subject. What was the intention of the framers in inserting this clause? The State of Maryland had refused the Confederation because she was not to enjoy any participation in the crown lands. She never admitted that those lands were the property of the States in which they lay, but insisted that they were a common property, wrested, *manu forte*, from the common enemy, and there were besides lands in various parts of the Union which were supposed to be embraced by the Treaty of '83, and which did not lie within any State: for this reason it was that the Constitution declared that nothing in that article contained should be construed to affect in a prejudicial manner the rights of the United States or of any of the States so that the question might be left as it was as to land not ceded or not lying within any State.

The gentleman alluded in very general terms to what had been suggested as a means of supplying the deficiencies in the Treasury, viz., a tax upon silks and wines. I shall not enter

on that subject now: but I ask whether his manner of stating the question is just? He asked whether New Hampshire would be satisfied with a tax upon silks and wines to pay the debts of other States? Is that a fair and just mode of stating the proposition? If he had said: will New Hampshire be satisfied to be taxed ten per cent on silks and wines for the sake of obtaining her part in the distribution of the proceeds of the public lands? he would have stated the question as it is: — for I do not believe, for one, that she is so attached to the delight of wearing rich silks and fluttering in brocade as to retain these in preference to the solid advantage of enjoying her just share in the distribution of the avails of the public domains.

Eulogy on Senator Isaac C. Bates

UNITED STATES SENATE, March 17, 1845.

WHILE we are hastening to bring our session to a close, a melancholy event, the forecoming shadow of which, growing every hour deeper and darker, has hung over us for some days, at length arrests our attention. One of our number is no more. Isaac Chapman Bates, a senator from Massachusetts, departed this life, at his lodgings in this city, yesterday, at twenty minutes past six o'clock in the afternoon, in the sixty-sixth year of his age.

At the moment when we are about to separate for our respective homes, to meet the circles of affection and friendship which are ready to welcome us, it has pleased heaven that he should pass that bourne whence no traveller returns.

Mr. Bates had undoubtedly much overworked himself in the discharge of the duties of his station during the late session of Congress. Already fatigued and exhausted, he yet felt it to be his duty, on one of the last nights of that session, to make an effort which severely tasked his remaining strength, and seemed to prostrate his powers. He appeared in his seat, for the last time, on the last day of the last month; though then ill, no such catastrophe as has since happened was at the time apprehended. But after that day he did not leave his home, nor hardly his bed. His dangerous situation soon becoming apparent, his family were sent for, and his wife and son were shortly at his bedside.

All that the highest degree of medical skill could do, all that could be attempted by the solicitude of anxious friends, all that could be suggested by conjugal and filial affection, was done, to the utmost, to save his life. But all was in vain. The

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will of heaven was otherwise. He had touched on his last hour; he had reached the end of his earthly career; his Maker called him to another world.

Mr. Bates was born at Granville, in the State of Massachusetts, and educated at Yale College. Adopting the law as his profession, he prosecuted his studies, for a time, under eminent instructors in New Haven, and afterwards with the late Judge Hinckley, of Northampton.

His ability and learning, and his high and honorable character, soon led to professional distinction, and in due time placed him in the rank of the most eminent lawyers and advocates in the part of the country in which he resided.

But the bar was not long his only sphere of action. The confidence of the community in his ability and fidelity, and its approbation of his principles, summoned him early into public life. He rendered long and valuable service in both branches of the legislature of the State, and in its executive council. But a larger field opened to him, and nearly twenty years ago he became a member of the house of representatives in Congress. In that body he remained eight years, sustaining his character, through the whole period, as a gentleman of probity and honor, of a deportment at once manly and courteous, and as much distinguished for the firmness with which he maintained his own opinions and principles, as for the liberality and candor which he always manifested to those who differed from him.

His subsequent election to the senate shows the sense which his native State entertained of the value of his public services, and her confidence in his further usefulness.

Of this body he was a member for five years. I may not now, here, speak of his political principles or opinions, the measures he espoused, or the measures which he opposed. But I may speak of him, I am sure, with the concurrence of every one who hears me, as a gentleman of uprightness and talent, of manly and honorable bearing, worthy to fill a seat here, by his intelligence and character, his just conception of the duties of his situation, and his conscientious devotion to the discharge of those duties. In this chamber, I am sure, he had not an enemy.

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The morning salutations of all of us were given to no one with more hearty good will. While his intelligence commanded respect, his social virtues and his eminent kindness and good feeling won universal esteem. The interest felt in him by his associates in this body could in no way have been more strongly manifested than by their daily and hourly and most solicitous inquiries during the progress of his illness; and all feel that his decease has left a void in our circle, as men and as senators, not easy to be filled.

Mr. Bates was not over ambitious to attract attention as a public debater. In that respect, he was far more distinguished for abstinence and retirement than for obtrusiveness. He left occasion to find him out, and call him out. Yet he was an able speaker and an eloquent man. His thoughts were clear, his topics well chosen, and his illustrations often quite happy and convincing. His manner was natural, simple, earnest. These qualities rendered him eminent and successful in addresses to the jury. To the hour of his death he had no superior for such efforts among those with whom he practised. He spoke with so much manifest fairness of purpose, dealt so ingenuously with opposing arguments, and put so much of his heart into his acts and into his words, that those who listened to him were apt to find themselves persuaded and convinced, without once thinking that there had been any exhibition of oratory or rhetoric. It was his case which he put forth, and not himself. With no studied power of speech, no artistical preparation, he appealed at once with singular felicity to the good sense and the right feeling of those whom he addressed.

In this body, while not neglectful of more prominent and conspicuous subjects, he gave constant attention to the duties of the committee on pensions, of which he was chairman. All know that the application to particular cases, of the general principles which the government has adopted on that subject, is difficult and delicate in no inconsiderable degree. Carefully abstaining from going beyond established rules, he spared no pains in the investigation of cases in which parties appeared to have a claim on the bounty of the country. Many a revolutionary veteran yet lives to bless his memory: many an aged

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widow owes her daily bread to his benevolent, patient, and assiduous labors.

Mr. Bates' death will severely wound many hearts among family, domestic, and social friends.

There is the partner of his life, now soon to follow his remains to the family vault; there are sons, and daughters, and kindred of various degrees. I will not invade the sanctity of their sorrow by empty words of attempted consolation. They will look for solace to resignation and religious faith, and bow humbly to the will of God.

When information of his death shall reach the beautiful village in which he lived, it will be a day of general grief. I see many an aged and venerable form, known to me, and better known to him, leaning tremulously on his staff, and shedding copious tears at the sad intelligence. I see the middle aged pause in their pursuits to regret the death of a neighbor, an adviser, and a friend. I see the youth of both sexes lamenting that the mansion, always open to their innocent associations, always made instructive by the conversation and kindness of its head, is now closed against its accustomed visitors by the stroke of death; and I hear the solemn tones which shall call afflicted families and an afflicted neighborhood into the house of God, to pay respect to his memory and supplicate the consolations of religion.

Mr. President, I have spoken of my deceased colleague in his professional and public character, and in his social and domestic relations. But Mr. Bates was conscious of a relation higher than all these. He felt deeply and sensibly that there was a Supreme Author of his being, and all beings, and that he had a connection with a world to come. He was a believer in Christianity, and devoutly thankful for the revelation of the New Testament.

Several years ago, and before his entrance on public life here, he united himself with a church in the town in which he lived, and continued a member to his death. There is reason to believe that his last hours were cheered by the light of Christian hope. He uttered no repining but expressed his willingness to depart, if such was the will of his Maker. Not that he did

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not desire life ; for he enjoyed life, and had much to live for. Domestic love, general respect, public honor, and a consciousness of usefulness — all these conspired to render his life happy, and its continuance desirable. Nor was it that he looked with indifference on death, for who has such icy stoicism, or, rather, who has such blunted sensibilities, such a stupid mind, as to contemplate with indifference a change of being and a change of worlds ? But he regarded death, with all its horrors, only as a passage to another state of existence — a state in which “this corruptible shall put on incorruption, and this mortal shall put on immortality.”

“ True, ’t is an awful thing to die ;
‘ T was, even to him ; but the dark vale once trod,
Heaven lifts its everlasting portals high,
And bids the pure in heart behold their God.”

Mr. President, when one of us rises here to announce the death of a colleague, he cannot but reflect that, if he stay here, the time must come, and he knows not how soon, when another colleague shall perform that sad office towards himself. We all know that we must follow our departed associate ; and no one of us can tell how few steps he may be, even now, behind him. I hope this reflection may chasten us in our heated pursuits of worldly objects ; may teach us to regard the world but as the world ; may inspire us with kindness, forbearance, and mutual good will ; and lead us, while we serve with all our powers the country which honors us, to recollect still that we are not here always, and that scenes not yet beheld, nor comprehended, nor capable of being fully conceived, are before us all.

Remarks on the Ashburton Treaty

UNITED STATES SENATE, April 3, 1846.

MR. WEBSTER proceeded to say, that, in the course of the discussion upon the Oregon question, observations had been made from various quarters of the Senate in disparagement of the treaty of Washington of August, 1842. It was my fortune (continued Mr. Webster), whether for good or evil for my country and myself, to have had a hand in the negotiation of that treaty. It was much discussed before the Senate, and that discussion was made public. In returning here again, sir, through the favor of the Commonwealth of which I am a citizen, nothing was further from any purpose of mine than to revive, or to reconsider, or to discuss over again any of the questions connected with that treaty. There have been sentiments expressed by Senators here very unfavorable to that treaty, but sentiments which, of course, gentlemen have a right to express. The President of the United States at the time, and myself as Secretary of the Department of State, have been concerned in a transaction which has been submitted to the Senate, which was properly before the Senate, and was a fit subject for discussion in the Senate. Nobody ever heard, or ever will hear, a word of complaint from me of anything said by any Senator in his place on that occasion. But since I have come here again, and, in the discussion of the Oregon question, allusions have been frequently made by way of disparagement to that treaty in many particulars, I have not thought it my duty to forbear a proper and just vindication of the treaty, as well for myself, who bore a secondary part in it, as for the then President, who gave it his sanction and submitted it to the Senate.

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It is my purpose, therefore, with the leave of the Senate, to trespass, I hope not too long, on its indulgence, as soon as I may have an opportunity, and to take occasion to reply to the allusions which have been made in this debate to the treaty of Washington.

It was with this view that I proposed to the Senate a call for certain correspondence, respecting the northeastern boundary, which has not been published. I believe, in point of fact, that my call did not extend so far as to embrace every unpublished fact in the case; nevertheless, it extended far enough for my purpose. The answer from the President, together with the documents asked for, are now in the hands of the Secretary of the Senate, and my purpose is to move that they be printed for the use of the Senate and distributed; and, should the Senator from South Carolina conclude his remarks to-morrow, it is my purpose to take up the subject to which I have referred, and detain the Senate for one hour upon it on Monday.¹

¹ See "Defence of the Treaty of Washington," Collected Works.

Remarks on Mr. Ingersoll's Speech

UNITED STATES SENATE, April 7, 1846.¹

SIR, I grow weary, weary with this speech. Who should allude to representations and imputations apparently so groundless? Why, sir, there is one thing in the speech from which I will supplicate its author to have me excused. He says, he never agreed with me in politics. That is true. We never did, and, I think, we never shall agree. He said, many years ago, that if he had lived in the time of the Revolution, he would have been a Tory. I don't think I would. He has said also very recently in a printed book of his, that the Declaration of Independence was carried with difficulty, if not by accident. That is his estimate of the great charter of our national existence. We would never agree in politics, I admit. But he said, Mr. Webster is a man of talents. Here I beg to be excused. I can bear his abuse, but if he undertakes my commendation, I begin to tremble for my reputation. I ask again, what can account for the apparent maliciousness of his statements? I do not think that they were made through malice—I am inclined to think there is not feeling enough in him of like or dislike. I think it proceeds from a moral obtuseness—a native want of perception between truth and falsehood, or the result of so long a discipline in that sublime school of morals that teaches all is fair in politics; and if he ever possessed an iota of original, native discrimination, it is altogether obliterated. But what does he say further? Speaking of the Treaty of Washington, he says, “the good old Bay

¹ From the “Congressional Globe” report of “The Defence of the Treaty of Washington” speech. This passage is omitted from the speech as given in the Collected Works.

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State," &c. He loves the old Bay State. *He* loves Massachusetts! — *He!* — HE! If he loves Massachusetts, he is like

“ that luckless swain, who grieved
For friendship unreturned, and unrequited love.”

I can tell him, sir, the whole people of Massachusetts hold him and his love, his principles, his speeches, his veracity, and his value of truth, in utter — what shall I say? — in anything but respect. I don't know their motives. I say the mind of the man seems to be grotesque — *bizarre*. Why, it is rather the caricature of a mind than a mind itself. Sir, we sometimes use a phrase borrowed from mechanics, when we see a man of some knowledge and a little talent, who is found absolutely incapable of producing anything useful, — we say, “There is a screw loose somewhere.” In this case the screws are loose all over. The whole machine is rickety, disjointed, and creaking — as often upside down as upside up; as often injurious to those who use it, as doing injury to others — “*Paulo majora canamus.*”

On the President's Answer to Mr. Jarnagin's Resolution

UNITED STATES SENATE, April 22, 1846.¹

I HAVE a few, and but a few, remarks to make on the President's message in answer to the resolution of the House of Representatives calling for an account of the disbursements during the period in which I had the honor to be Secretary of State, out of the fund for the contingent expense of foreign intercourse.

In the first place, sir, I am happy to say that I entirely approve the course of proceeding which the President has adopted. In my judgment, he could not have acted otherwise than he has done, without the violation of law and of his own duty. Sir, as I know that not a dollar was disbursed from that fund without the sanction of the President, and as I am conscious that every disbursement was made for a proper and necessary public purpose, it might be thought that I should desire the publication of the papers, in order that everybody might see what they are,

¹ "*Resolved*, That the President of the United States be requested to cause to be furnished to the Senate an account of all payments made on Presidents' certificates, from the fund appropriated by law for the contingent expenses of foreign intercourse, since the 4th March, 1825, to this time; with copies of all entries, receipts, letters, vouchers, memorandums, or other evidence of such payments; to whom paid, and for what; including the sum of thirty thousand dollars for contingent expenses of all the missions abroad, now proposed to be provided for by the bill before the Senate entitled 'An act to supply deficiencies in the appropriations for certain objects made for the services of the fiscal year ending 3d June, 1845;' but no document or matter is requested by this resolution to be furnished which, in the opinion of the President, would improperly involve the citizens or subjects of any foreign Power."

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or what they show. But this is a matter of so little concernment to me (and I presume it is of as little to the late President) that I certainly would not wish to see an important principle, and an important law, violated and broken for any personal convenience in that respect. I am not at all apprehensive that the country will suspect either President Tyler, or me, acting under his authority, of anything improper in the disbursement of a few hundred or a few thousand dollars, in a case in which the law reposes confidence in the President, and gives him a discretion as to making the expenditure public.

Sir, a President of the United States, or the head of a department acting by his authority, must think but poorly of his own reputation and standing with the country if he is afraid of being suspected of having violated his duty and his oath in a matter of so little moment. I will add, that a person who entertains such a suspicion, without reason, of any public man, may himself be well suspected of having held a no very complimentary dialogue with himself.

Sir, we all know that the head of a department cannot touch a dollar of this fund except with the President's sanction. The whole power and the whole responsibility are with the President. The President's message states this so fully and clearly that I need not dwell upon it. I will say, in the first place, that no expenditure, improper in itself, or improper in its amount, was made, to my knowledge, judgment, or belief. And I will say, in the next place, that the late President of the United States, in all things respecting the expenditure of the public moneys, was remarkably cautious, exact, and particular.

And I here say, sir, that all declarations, averments, statements, or insinuations, made anywhere, or by anybody, which impute perversion, misapplication, or waste of the public funds, committed or made by me while Secretary of State, are utterly groundless and untrue. And I will conclude with one remark, the bearing of which I shall leave to the Senate and to the country :

Whoever charges me with having either misapplied or wasted the public funds, while in the Department of State, has either

seen the papers, or has, in some other way, obtained knowledge on the subject, or he has not. If he has seen no papers, and has no knowledge, then his imputations are purely wanton and slanderous. If he has seen the papers, or has any knowledge, then he would be sure to state what he knows, if he knows anything to sustain him in his charge. Silence, under such circumstances, is conclusive that he knows nothing, because he is under no obligation of secrecy, and, in absence of all other proof, he would of course tell all he knew, if he knew anything which could in the slightest degree bear him out. The charge, therefore, was either made in utter ignorance of any facts to support it, or else with the knowledge that the facts which do exist would, if made known, entirely disprove it. As to the source of this miserable vituperation, I have nothing to say. I am afraid I shall be thought to have paid too much attention to it already. Sir, I leave the author of these slanders where he is — I leave him in the worst company I know of in the world — I leave him with himself.

Remarks on the Power of Removal

UNITED STATES SENATE, May 14, 1846.¹

MR. WEBSTER said he had no disposition to enter into a discussion of the question of executive patronage on this occasion. A bill had passed the Senate, if he rightly remembered, in 1836, the effect or object of which was to reduce the influence of the Executive derivable from the exercise of the appointing power. The question then led to a discussion, historical and argumentative, of the general question of the removing power of the President. In the consideration of that subject, he had come to a conclusion satisfactory to himself, that the general rule adopted by the Legislature as the construction of the Constitution was erroneous. The first decision on the subject was made in that body in the year 1789, upon the passage of a law providing for the appointment and removal of the Secretary of the Treasury. The bill provided that the Secretary of the Treasury should be removed or removable at the will of the President. The question was much discussed, and it was finally decided by retaining the clause through the casting vote of the President of the Senate, Mr. John Adams. Mr. Madison led the debate on the same subject in the other House, and in that debate expressed the sentiment that any President who should remove from office a meritorious officer upon political grounds alone would be worthy of impeachment. Mr. Madison, however, yielded to what appeared to him to be an argument of necessity, and the two Houses of Congress recognized the power of removal to be in the President, though the power of appointment was vested not in him alone, but in him together with the

¹ In the debate on the bill making alterations in the pay department of the army.

Senate; and thus a complete anomaly was introduced; for he believed there was no other government on the face of the earth in which the power of removal existed in one body, or under one organization, and the power of appointment in another.

MR. BERRIEN. The power of removal at pleasure?

Mr. Webster said, he meant, of course, the power of removal at pleasure. He knew of no constitutional form of government in which the power of removal was not considered part and parcel of the power of appointment. The office being held at the will of the appointing power, the removal of one man was effected by the appointment of another. There was no separate process of removal, and herein consisted the incongruity, he had almost said the absurdity, of our course of proceeding. There was no recorded copy of removals. The President sends to the Senate a list of names, A and B to be appointed in the place of C and D, removed. When were they removed? They received no notice of removal until their successors presented themselves to take possession of their offices.

After the discussion upon the subject in the Senate in 1836, many distinguished Senators, never having had their attention turned to the subject before, were of opinion that the original construction of the Constitution was wrong. The bill required that whenever a removal was made by the President, he should signify to the Senate the cause of removal. He remembered very well the history of the bill of 1820. It originated in the Senate, and was advocated by several leading distinguished gentlemen, who proceeded upon the ground of placing more responsibility upon the persons appointed, and providing for greater accuracy and promptitude in the settlement of accounts. But they did not take the political view of the question at all. They never dreamed of the great extension of political power which they were giving to the chief executive officer of the Government. They were all aware of the unhappy state of things which had thus been brought about. It was a state of things which had a most pernicious tendency, leading to a constant succession of contests for political power, which contests

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were stimulated and promoted far more by personal motives than by a desire to advance the public interests. Taking it for granted that there would always be opposing parties existing in a popular Government — and he supposed that all wise and sensible men would admit that it was of importance that there should be opposing parties — he supposed also that every sensible man would admit that as little as possible of personal motives should be permitted to enter into political struggles.

At an early period of the session he had intimated to the Senator from Virginia that it was his purpose, during the session, to revive the bill which passed the Senate in 1836, and to bring the subject again to the consideration of the Senate and before the country ; for he verily believed that there was not a fact or circumstance of more evil omen existing in this Government than the great facility which the four-years law afforded to the executive Government for increasing its influence.

Remarks on Volunteer Regiments

UNITED STATES SENATE, May 26, 1846.¹

FROM the best reflection he had been able to give the subject, it was his opinion that the first section should be allowed to stand just as it was. He saw more difficulty in making any modification of it, than in taking it just as it was. The amendment of the Senator from Maryland would appear very just and reasonable; that was, taking his amendment with that of which it was an amendment, the provision would be, that those who come in as general officers, not from the line of the army, should consider themselves as terminating their services at the end of the war. He did not say that there was any injustice in that, but he could well conceive that it might lead to great personal injustice and inconvenience, because one of these brigadier generals coming from civil life might develop such talent that he would be the very last man whose services the country would desire to lose. He did not think they could foresee events; he did not think that they could foresee the development of military character so clearly as to be able to prescribe any rule which it would be necessary to adopt when the time came for the reduction of the army. With regard, therefore, to the first section, he would, with all respect to the gentlemen better informed, who had taken a different view of it, vote for it just as it was. Without intending any formal opposition to any other part of this bill, he would say that he would have much preferred that a different view had been taken of the means of raising an army for the temporary and occasional purpose created by the present state of affairs. He knew very well what had been the

¹ In the debate on the bill supplementary to the act providing for the prosecution of the war between the United States and Mexico.

history of their legislation on the subject of using the militia of the States ever since the adoption of the Constitution. The practice was borrowed from the revolutionary period, and had been continued with some very decided advantages, but also many serious disadvantages — much unpleasant collision, as they knew. Now, it appeared to him that they would have acted somewhat more wisely if they had proceeded upon the true line of their policy, as prescribed by the Constitution. They were authorized to raise and support armies, bound by no rule but the discretion of Congress. That was a large, and broad, and unqualified power. Congress was also authorized by the Constitution to call forth the militia of the States — for the militia was the militia of the States — to repel invasion, suppress insurrections, and execute the laws. In the present bill, and that passed the other day, these persons were spoken of as volunteers. All were volunteers in the militia proper, all were volunteers in the service of the United States, unless it were the militia of the States, called into the service of the United States for the exigency provided for in the Constitution, and that service was compulsory — the only compulsory service under this Government. In his opinion, then, it would have been better to have had all the military forces, regular or provisional, employed and paid by the Government of the United States, officered by the United States Government. In other words, it appeared to him that it would have been more consistent with the acknowledged power of Congress if these troops had been called into the service, and the officers been commissioned by Congress itself, leaving them just as much volunteers as they now were. He had heard no objection to that except that the practice in the States had been that the volunteers selected their company officers, and that by the latter the field officers were selected. That could be done just as well in a provisional army, under the sanction of a law of Congress, as not. But there would always be considerable inconvenience in having forces paid by the United States and commissioned by State authority. He did not know how far they might be able to go on with that system, and avoid some great inconvenience. The bill author-

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ized the President to accept the service of citizens by regiments, battalions, squadrons, and companies. A brigade was to consist of two regiments—one might be raised in Ohio and the other in Indiana. The service of these regiments is accepted. Who was to command them? According to the proposed law the President was to designate the general officer out of the militia of the States. What did that come to? Why, to this: that a brigadier general of Indiana—a brigadier only by State authority—commands the Ohio troops in the service of the United States! It struck him that a serious difficulty thus lay in their way. The brigadier commanding these regiments, thus designated by the President, was not to come before the Senate. He was not to derive his authority from the Government of the United States. He could easily foresee that they could not go on long with such a system without great hindrance and obstruction. Nevertheless it was not, as he had said, his purpose to offer any formal opposition to the bill. They would grow wiser by experience; and if the war should last—which God forbid!—they would see the propriety of having a provisional army for short enlistment, kept a distinct corps for all purposes of promotion and organization, destined or expected to be temporary and occasional in its use and character, but nevertheless officered by the Government of the United States or the election of the soldiers and subordinate officers as considered advisable. Then there was difficulty to be expected in executing the fourth section of the recent law, however modified by the present, in some of the States. The President, by the law passed the other day, was authorized to accept the services of volunteers by regiments, &c. In some of the States the militia was local. It was so in the State of Massachusetts. There might be—he did not know that there was—some provision by which the Governor might organize volunteer corps, but they were annexed—attached. Their (Massachusetts) militia was a local system altogether. His desire would be, then, that this bill would be made amendatory of the other, so as to make suitable provision for such cases.

Remarks on the Oregon Question

UNITED STATES SENATE, June 1, 1846.¹

MR. WEBSTER said he entirely concurred in the proposition which had been agreed to by the Senate to refer the bill to the Committee on the Judiciary; and he concurred in what appeared to him to be the general scope and object of the instructions moved by the Senator from Missouri (Mr. Benton); but, in regard to most of these instructions, he thought suggestions might be made which the honorable Senator himself would say were deserving of his consideration.

There appeared to be three objects embraced in those instructions. In the first place, the establishment of a temporary government for the protection of our citizens until a regular territorial government should be provided; in the second place, for the organization and establishment of such territorial government; and, in the third place, a declaration *in presenti* of what shall be the line of boundary until a boundary be established by treaty. The first object sought to be obtained, viz.: a temporary provision for the protection of the citizens of the United States now in Oregon, appeared to be by proposing to adopt, under the authority of Congress, a law analogous to that adopted by England in 1821 for the protection of her subjects within the same territory—the phraseology of the first part of the instructions being that the committee amend the bill by extending the jurisdiction and laws of the United States, civil and criminal, over the citizens of the United States in Oregon to the same extent as British laws were extended over the territory by act of Parliament;

¹ In the debate on the bill to protect the rights of American citizens in the Oregon territory.

but the condition of the two countries in regard to legislative power was so very different, that we could not accomplish our object by adopting the phraseology of the act of the British Parliament.

He believed that the laws extended over British subjects in Oregon, by act of the British Parliament, were the laws of Upper Canada. Those were the laws which operated for the protection of their subjects beyond the Rocky Mountains; and that was practicable, because they were municipal laws, and laws for the punishment of crime. But, under the general phraseology of these instructions, no such object could be reached. Suppose the laws of the United States were extended over Oregon. What were they? The crime of murder, committed in the territory, could not be punished by any authority of these laws. Congress had no municipal power, except within the District of Columbia, and such places as might be confined to its care. The Senator from Florida (Mr. Westcott) had suggested many other cases, in regard to which there were no laws of Congress which would apply, because our system excluded the enactment of municipal law. We have (said Mr. Webster) no laws regulating descent and the title to property, none relating to devises, or any of the relations of persons and property.

The first inquiry, then, which I would submit to the Senate is, how far it is necessary, under the circumstances of the case, to provide any temporary enactment for the government of our citizens in Oregon. This will depend very much upon our hopes or fears that the dispute between the two countries will soon be terminated. My hopes predominate over my fears upon this point. I look for a settlement of the question and the fixing a line between the possessions of the two countries within a short period. The question then is, whether it is necessary or expedient, on the whole, to disturb the existing state of authority there, by the interposition of any authority whatever? If the view that I have taken be taken also by the Senate, if we believe that the country will soon be in a condition that we may apply to it and establish over it a territorial government, perhaps it will be considered the

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most wise course to leave things as they are until that period arrives.

The next thing is the preparation of a bill making provision for the establishment of an actual territorial government over Oregon. This entirely meets my approbation. I think it is high time that some of the committees of this body should have under its consideration, and in progress of perfection, an organic law of this kind, and in this respect I concur with all the suggestions contained in this branch of the instructions.

Then comes the third object, which seems to contemplate fixing the northern boundary. Well, sir, upon such reflection as I have been able to give to the subject, I should rather incline to omit this for the present. I should rather incline to confine ourselves for the present to the preparation of a bill for the organization of a permanent territorial government, entertaining the hope that before we separate, the northern boundary may be fixed by treaty; and if so, no provision of law on the part of Congress will be necessary. If, however, there should be no settlement of the boundary, why there will be time hereafter, even at the last day of the session, to decide, if we must decide by law, upon a northern boundary. I would be glad, therefore, if the Senator from Missouri would agree so to amend those instructions as to abstain from touching upon the question of boundary, or of any temporary legislation for the territory of Oregon. It has been intimated, however, that it would be well to give this matter some further consideration; and I move, therefore, that the Senate do now adjourn.

Mr. Webster withdrew his motion for adjournment at the request of Mr. Calhoun.

Remarks upon the Tariff

UNITED STATES SENATE, July 14, 1846.¹

I RISE, Mr. President, to perform the first act for which an opportunity has been afforded me, in regard to a subject of which I can conscientiously say that never, in the discharge of any duty of a public nature, did I approach a transaction or begin a discussion, with a deeper sense or conviction of the importance attached to it, or a stronger feeling of the responsibility devolving upon me as a member of the Senate. I am to present, with the leave of the Senate, a petition against the bill now before us, entitled "An act to reduce the duties on imports, and for other purposes."

Notwithstanding, Mr. President, the general expectation, or rather the frequently repeated declaration that the new Administration would think it one of its duties to repeal or greatly to modify the act of 1842; notwithstanding the frequent communications on the subject from the Executive Chief Magistrate, in his Inaugural Address and in his Annual Message; and notwithstanding all the expressions of apprehension which those opposed to the election of the present Chief Magistrate distinctly and strongly made during the pendency of the election; notwithstanding, too, the long period during which the bill has been under consideration in the other House, and the late hour of the session at which it made its appearance here; notwithstanding all these circumstances, and notwithstanding that the country had, I admit, the full means of knowing and should have taken notice of its progress accordingly; notwithstanding that the country, I admit, was put upon its prepara-

¹ A bill from the House, introduced in the Senate July 6, 1846.

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tion, and ought to have made that preparation, yet the fact is now unquestionable that the appearance of this bill in this House, with the prospect of its passing into a law, has taken the country by surprise, and, as stated in the paper which I am about to present to the Senate, it is beginning to produce consternation and alarm. Sir, it has not been expected anywhere, from the Potomac to the Penobscot, that a bill, founded upon the principles upon which this bill is founded, and containing the provisions which this bill contains, could possibly receive the sanction of Congress. The people were unbelieving, and therefore they are taken by surprise. Sir, it is not my purpose now to enter into a discussion either of the principles of this bill or of its provisions; but if my health holds out, under this broiling sun, it is my purpose, at a proper time, to discharge what I think to be my duty, by a thorough examination of the principles of the bill, as well as a thorough examination of all its details. I propose to do this, Mr. President, without indulging in crimination or denunciation, and I hope to show to the Senate and the country that this bill, so novel, so dangerous, so vicious in its general principles; so ill considered, so rash, and I must say so intemperate in many of its provisions, cannot but produce in the country the most serious and permanent mischief if it should become a law. The bill assumes as its basis the ad valorem system exclusively, and it is the first instance in the existence of this government of the adoption of such a system.

The bill was pressed upon the consideration of the Senate yesterday by the honorable Senator from Alabama with his accustomed ability and perspicuity, as being founded on the only true principle; that principle being, in the estimation of the honorable Senator, far preferable to specific duties. And I think the honorable Senator almost imputed to our forefathers, the authors of the first law for collecting duties from imports under this government, fraudulent purposes; because he seems to consider that the ends and objects of resorting to specific duties from the beginning were to conceal from the people the amount of taxes paid by them. This is a bold proposition; and the proposition that ad valorem duties, even

for revenue, are altogether preferable as a universal rule to specific duties, is a bold proposition — one which I have not heard before from the mouth of any public man. I have heard it, it is true, from persons hanging about the custom-houses, persons of anomalous character and standing; but I do not remember to have heard from the lips of a public man before, anywhere, or at any time, that a universal system of ad valorem duties was desirable in any case to be adopted.

Now, here we have it announced, at the commencement of this discussion, that the principle of this bill is the only true principle. That the bill can be sufficiently amended by any other amendments than such as touch this principle, I do not believe. For myself, unless I shall see occasion, or feel it to be my duty to propose or to support amendments which go to change the principle of the bill, and to restore specific duties, I do not propose to trouble the Senate with any amendments, nor to hear me in support of any propositions to amend.

Mr. President, it cannot and ought not to be concealed that there has been, and there is in all parts of the country, a strong desire that this tariff subject should be settled upon some permanent principle or means of justice, so that it shall not be agitated as often as a new election occurs. I believe that honorable and honest men of all parties, everywhere, wish this to be the case. I may say there have been expectations entertained by others as well as myself — by leading gentlemen belonging to the ranks of the majority here, who are endeavoring to deal with this subject in a statesmanlike manner, who desire to modify and accommodate this great subject or branch of our legislation so as to establish it upon such grounds as it can stand upon with advantage to the country. I have heard of some such movement, and I would fain look for it now if it were not too late; but, instead of that, there comes a bill which I must consider extreme in its principles, and uncertain, because untried, as all admit, and unknown. The honorable Senator from Alabama frankly admitted in his speech yesterday that he could not bring the testimony of experience in favor of a bill like this. Instead of a healing measure, therefore, I must say it appears to be an extreme

measure, and comes upon the country, from one end of it to the other—I mean that part of the country which may be considered, perhaps, as more immediately interested; that is, all the country from here to Maine—in the character of an extreme and unexpected measure, and such a one as the people cannot persuade themselves that Congress will ever pass.

It is not my purpose, sir, to anticipate the course of discussion which has been already begun, and in the outset of which the honorable Senator from Alabama, the chairman of the Committee on Finance, has made his exposé of the views and purposes of the friends of the bill. I will content myself to-day with listening to my honorable friend from Maine, who is a member of the same committee; but I think there can be no more appropriate time for me to present the petition which I hold in my hand, and which is signed by every dry goods importing firm of the city of Boston. If I understood correctly the honorable Senator from Alabama yesterday, he said that *ad valorem* duties had never been complained of, as far as he knew, except by manufacturers. Now, sir, here is a paper, bearing, as I said, the signatures of all the importing merchants of dry goods in the city of Boston, drawn up by themselves, after the appearance of this bill in the other House, which has been sent to me for presentation here, and I will now read it:

“To the honorable Senate of the United States of America:

“The undersigned, your memorialists, would respectfully represent that they are importers of foreign goods into the city of Boston, and, as such, they have examined with alarm and consternation the bill recently passed by the House of Representatives to change, in a great measure, our system of collecting duties on imports.

“Should the bill referred to become the law of the land, we are fully convinced that we shall be compelled to abandon our business into the hands of unscrupulous foreigners, who have little or no regard to our custom-house oaths.

“From long experience we are entirely satisfied that we cannot compete with this class where duties are based merely on the *ad valorem* principle.

“Without expressing any opinion respecting the amount of duties which should be levied, we earnestly pray your honorable body that the bill may be so far amended as to have all duties made specific which in their nature can be so arranged.” [Signed by forty-eight firms.]

The honorable Senator from Alabama will now find that there are complaints, if he did not hear of any before, against *ad valorem* duties; and I believe, sir, it is the case that a memorial equally strong and almost equally unanimously signed by the importers of reputation and character, both native and foreign, of the city of New York, is now in the possession of the Senate, or soon will be. I may say I know of its existence, and I wish to draw the attention of the Senate to it, for it goes more into detail.

But what am I to do with this petition? There is no committee to refer it to. It is a thing before unheard of in the history of the Senate, that a great measure of this sort, necessarily depending so much on detail, should be received from the House, and carried into discussion without being submitted to the examination of a committee. A bill so greatly affecting the revenue and the commerce of the country, not to be examined even by the Committee on Finance! When, under what administration, under what exigency of war or peace, did the Senate ever before deal in this manner with such a question as this? Never; never. There seems, therefore, to be no other mode of making the opinions of the petitioners and the facts they state, and the reasons which they urge, known even to the Senate, than by reading their petition, because we all know that to present papers to the Senate, and send them to the printer without examination, is to place them where they are very apt to be lost sight of. I shall feel it my duty, therefore, in regard to petitions and memorials sent to me (and they are already very numerous), to state their contents to the Senate, to make those contents known, as far as it may be in my power, to the Senate and to the country, in order that whatever light we can command upon a subject of such vital importance may be thrown around it. I present this petition, therefore, and ask that it may be printed.

Remarks upon the Tariff

UNITED STATES SENATE, July 28, 1846.¹

MR. WEBSTER rose and said, that he regretted that final action on this bill should not have been postponed according to the motion of the honorable Senator from Connecticut (Mr. Niles); and since he had mentioned that gentleman, he took this occasion of rendering to him his thanks for the firmness, the vigor, and the devotion with which he had supported the interests of his constituents and of the country.

But (said Mr. Webster) I rise chiefly to say that a great duty will devolve on both Houses at the commencement of the next session, just the same as if the motion of the honorable Senator had prevailed. Had his motion been adopted, this bill would have come up for discussion as soon as we should reassemble. And I tell gentlemen on the other side, that the President's signature to this bill will not be dry till a determination will be entered into, far and wide, to bring it under the revision of this very Congress for reconsideration. It ought to be so, and it will be so. The bill goes into effect on the 1st of December next, and we meet here on the 5th: and I here tell you, that on the very first day of our session a bill will be in the other House to repeal this law.

A friend near me (Mr. Evans) says that there will be another bill there before it, and that will be a bill to carry on the government. [A laugh.] However that may be, a bill will be there to repeal this law; and it ought to be so. It is as impossible as that the sun should go backward and set in the east, that the people should suffer the principles contained in this bill to

¹ In the debate on the first passage of the House bill, "An Act to reduce the duties on imports," as amended by the Senate.

prevail. Gentlemen do not know the people. [A laugh on the Democratic side of the Senate.] I say they do not know the people between here and Maine — I speak, of course, of Southern gentlemen; and though they may laugh now, they will laugh on the other side of their mouths before next December. They do not know the men on whom this bill is mainly intended to operate; they do not know their character, nor their pursuits, nor their politics. So far as my advice may go — and I shall address it, of course, to my own people — they will be united in calling on this very Congress to reverse its decision. There are people in the country who think they have been deceived; and they say, that they have been deceived once is the fault of others; if they are deceived a second time, it will be their own. A great portion of the members of the popular branch of the Legislature are to be elected before December. Gentlemen who have voted for this bill will go home, and there they will learn the sentiments of the people. These elections will be pending, and they will be interrogated by the people. Political professions will then be examined, and will be judged of by their appraisers, *ad valorem*.

What has been the history of this measure in Congress? The other House, after a sitting of some seven months, sent the bill to us; it was referred to no committee — it was accompanied with no report; but pressed through the body in a manner never known before in this Senate; a question of this magnitude, involving as it does an infinite investigation of details, and yet not one of these details investigated by anybody — not one! Can gentlemen believe that the great mass of the people will not be able to see that the measure has been brought about by certain political disappointments and extraordinary proceedings in the Legislature? Most certainly they will. They cannot but see and feel in a matter so nearly concerning them. Public sentiment is excited on this subject. I venture to say that on two points public opinion is settled; first, as to the utter folly of the *ad valorem* principle in the imposition of duties — and I do not believe that there are at this moment five gentlemen in the Senate who, if left to their own choice, would prefer that mode, nor indeed can I persuade

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myself that there is a man in the whole executive government who, if the bill were now to come for the first time from the treasury, would have it in its present form. All the industry of the land is against it; the manufacturers are against it, the importers are against it, the shipowners are against it—no man cries, God save it! it is against the sentiment of the land. The great principle of a just discrimination in favor of such articles as the general interest requires, is the principle which commands the approbation of the American people. I here tell gentlemen we shall have henceforward no more ad valorem tariffs. We never shall go on the principle of a horizontal tariff. This bill cannot stand. It will not stand. It is a house built upon the sand; and no intelligent man will think himself safe beneath its roof; it will fall on him and crush him.

I have never said that the tariff of 1842 might not be well amended; but this I say, that the principles of that law are grounded in all true political science, on all sound legislation, and they are so imbued in the minds of the people, that nothing can get them out. They will have specific duties, and you cannot help it. You might as well resist the course of an avalanche.

Having said this, I will add nothing of an exciting or offensive kind. I give my advice. I say that public opinion will express itself in a way you cannot withstand. If there shall be a public acquiescence in the system broached by this bill, be it so. Then we shall fall down upon another principle in regard to our revenue. But if in the coming elections the public voice shall be loud and distinct, so that members will be obliged to hear and obey it, they will not defer to another Congress the correction of our errors, but they will bring this bill before those who made it, and that on the very first day that we shall again convene.

Remarks on the Vote of Thanks to Major-General Zachary Taylor

UNITED STATES SENATE, February 3, 1847.¹

MR. WEBSTER regretted exceedingly that when they were about to tender a tribute of respect to a military man abroad, anything should occur, or be proposed to be mixed with it, which should break up their entire unanimity. To be valued, this tribute of respect must be unanimously bestowed. It must appear to flow from a general sense of what was due to the occasion and due to the officer. And always, so far as he knew or remembered the history of this government, the thanks of Congress had been tendered, when they had been tendered at all to military men, by distinct propositions, free and clear from all other considerations whatever. The propriety, the gracefulness belonging to the occasion, required it. Now, he had in his hand the resolution which passed this body last year. It was in these words:

“That the thanks of Congress are due and are hereby tendered to Major-General Zachary Taylor, his officers and men, for the fortitude, skill, enterprise, and courage which distinguished the late brilliant military operations upon the Rio Grande.”

He should propose to take that resolution in its very words, and to adopt it as an amendment to the resolution before the

¹ In the debate on the joint resolution from the House, tendering the thanks of Congress to General Taylor and his officers and soldiers for their courage, skill, fortitude, and good conduct in storming the city of Monterey. Mr. Speight of Mississippi had moved to amend the resolution by striking out the proviso “that nothing herein contained shall be construed into an approbation of the terms of the capitulation of Monterey.”

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Senate, and pass it, and make it a real and substantial tribute of respect to General Taylor and the army.

He had only further to say that he could vote for no resolution which, in the present state of things, had a sting in it on General Taylor's conduct, or which left any doubt or hesitation. He wished to leave out every subject about which there was a difference of opinion, about which there was a doubt; and on the other hand he really did not suppose that gentlemen could have contemplated the tender of the thanks of Congress to General Taylor in a manner to be acceptable to him — that is, in a manner to be expressive of the unanimous consent of Congress — with such provisions as were inserted there by way of preamble, recital, or dissertation on the Mexican war. Now he should vote for nothing that recites or discusses the merits of this Mexican war. General Taylor could be under no mistake about that. If he withheld his vote, as he should, from the resolutions in their present shape, there was not an officer or soldier in that war that could read that would not understand him. When they were about to do an act of a generous character — when they were about to unite in grateful homage to bravery — was it generous, was it manly, to set traps, by way of preamble and recital, to screw out of gentlemen opinions which they do not perhaps entertain, and if they did, do not think this a proper occasion to express them? No. Why should they not act with the liberality and generosity that became them? Why should they not give to General Taylor and his brave army the thanks that were due to them, in the ordinary phraseology in which the thanks of Congress were expressed? Why should they put anything in it that might in any degree produce reluctance in any one who was to vote for it, or in any degree mitigate the sense of gratification with which those in whose honor it was to pass should receive and greet it. He was for a clear unembarrassed vote of thanks, such as it would be honorable for Congress to give and the army to receive; and if he could not get a chance to vote for that, he should vote against any such resolution as that now before the Senate.

On the Government of California and New Mexico

UNITED STATES SENATE, February 22, 1849.

I BEG to call the attention of the Senate for five minutes to a paper which I wish to lay on the table of the Senate. The Senate has been engaged now for some days in discussing the very important question of the present state and condition of the newly-acquired Territories of the United States, and of the necessity of some provision immediately being made for the government of these Territories; and we have given some consideration to the kind of government it is expedient, bearing in mind the urgency of the case and the approaching end of this session of Congress, to form for them.

I have heard, sir, with respect and attention, the speeches of honorable Senators who have addressed the Senate on this important question; and I have read carefully the propositions which have been made in the form of proposed amendments to the bill now before the Senate. To these amendments there seem to be objections, arising as well from the manner in which the subject has been introduced, in the way of amendments to this bill, as from the character of the propositions themselves.

I wish, sir, at as early a moment as may be convenient, to suggest in a precise form what appears to me to be the most expedient course to pursue at the present moment in regard to the Territories of California and New Mexico. If it be the opinion of the Senate that, considering the circumstances of the case, some provision for the government of these Territories

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may with propriety, or from necessity, be adopted in the civil and diplomatic appropriation bill, I shall offer the paper I hold in my hand as an amendment to that bill; but if the sentiment of the Senate shall be that any bill relating to California shall be considered as a separate measure, then this paper will suggest what, in my judgment, is the most practicable and reasonable course now to be adopted. I do not propose to prolong any discussion on this bill. My purpose is to have the paper which I hold in my hand printed. I ask that it may be read and printed, by way of amendment to the bill now before the Senate, or as a substitute for it.

The Secretary read the paper as follows, and it was ordered to be printed:

“That the President of the United States be, and he hereby is, authorized to hold possession of and occupy the Territories of California and New Mexico, ceded by Mexico to the United States by the treaty of the 2d of February, eighteen hundred and forty-eight; and that he be authorized for that purpose and in order to maintain the authority of the United States, and preserve peace and order in said Territories, to employ such parts of the army and navy of the United States as he may deem necessary.

“SEC. 2. *And be it further enacted*, That until the expiration of the next session of Congress, unless Congress shall sooner provide for the government of said Territories, the existing laws thereof shall be maintained and observed; and that the civil and judicial authorities, heretofore exercised in said Territories, shall be vested in, and exercised by, such person or persons as the President of the United States shall appoint and direct, to the end that the inhabitants of said Territories may be protected in the full and free enjoyment of their liberty, property, and religion: *Provided, nevertheless*, That martial law shall not be proclaimed or declared in said Territories, or either of them, nor any military court established or instituted, except ordinary courts-martial for the trial of persons belonging to the army and navy of the United States.

“SEC. 3. *And be it further enacted*, That the sum of — thousand dollars be, and the same hereby is, appropriated for the purpose of carrying these provisions into effect, to be paid out of any moneys in the treasury not otherwise appropriated.”

On the next day Mr. Webster made the following remarks : ¹

The Senate and the country will bear me witness that I have had no hand in producing the present state of things, connected with these Territories which we have acquired. I have opposed all wars leading to such acquisitions, and I have opposed all treaties accepting of such cession of territory ; and I do not ascribe to myself any considerable sagacity when I say that the state of things which exists to-day — brought about, perhaps, a little sooner by accidental circumstances than would otherwise have been the case — was as evident to me as the sun in heaven, ever since the notion prevailed of new acquisitions on the southern border of the United States. It is, nevertheless, not my purpose to mingle in this discussion anything of the past. There is enough to occupy our most serious thoughts in learning how to deal with the present ; in learning how to deal with it as prudent and practical men, desiring to preserve peace in the country, desiring to give protection to all those who live under the government of the United States. And, while I do not think it wise or prudent to dwell on the past, I do not think it wise, either, to attempt to look too far into the future. There are evils which threaten individuals, and there are evils which threaten communities, which sagacity and a long-reaching foresight may probably avert ; but there are other evils, occasionally threatening individuals and communities also, which are as likely, perhaps more likely, to find their remedy in the course of events than in the exercise of prescience or premonition ; and this, in my judgment, is one of those cases. I think our practical duty — our duty as practical men — is to provide a government for those Territories, for the preservation of peace among the inhabitants, to give security to all well-disposed persons, and to repress the efforts

¹ In the debate on the amendments to the bill making appropriations for the civil and diplomatic expenses of the Government for the year ending June 30, 1850. The amendment of Mr. Walker of Wisconsin, modified by Mr. Foote of Mississippi, — extending the Constitution of the United States to the Territories of California and New Mexico, — being before the Senate, Mr. Dayton of New Jersey opposed it, and offered an amendment consisting of the statute which gave a temporary government to Florida and Louisiana, with an appropriation to carry it into effect.

of the ill-disposed; to give them a government such as we may in the short period now before us, considering the great distance at which they are from us. And that single purpose has been all that I have contemplated in the proposition which I have laid before the Senate, and of which, at some convenient time, it was my purpose to ask further consideration. My idea is, that the government, for the present, must be substantially a military government; that we can hardly do more than keep the peace, and protect the lives and property of individuals, until we either admit the people who are freemen as a State into this Union, or give them a regular territorial government. I think it should be limited to that one object—to keep the peace—without any attempt to administer revenue laws, or any other laws growing out of their political relations, because I do not think it practicable to do any such thing.

In the case of Florida, to which attention has been drawn by the Senator from New Jersey, there was a provision that the revenue laws should be applied to the Territory. That, I think, was in 1822, after the ratification of the treaty, but it all came to nothing. The President did authorize the collection of customs; he did appoint an officer in that collection district; but, so far as I understand, there never was a hundred dollars collected from customs in Florida until they had received a regular form of government; and it cannot be otherwise, while it is at the same time attended with considerable expense, inasmuch as you must have custom-houses, navy officers, appraisers, and a whole corps of official persons who will have nothing to do; because, how is it possible to establish or administer a system of revenue laws before there are any courts? Who is to seize vessels under the revenue law? Who is to libel them? How are they to be tried? What is to become of the property? There can be no seizure by law, no adjudication by law—and that is all-important—until there is a regular territorial government established. This must be obvious, I think, to everybody; and this is the objection, in my humble judgment, to the proposition of the Senator from New Jersey, which goes further than the proposition that I

have submitted to the Senate. It will be expensive, it will be giving unnecessary power to the executive Government, and it will be useless.

Since I had the honor of submitting my own thoughts upon this subject very briefly to the Senate, the House has sent us a bill which purports to extend the revenue laws to the Territories. In my judgment, the true course to adopt, in the position of things as they are, is, to arrest all amendments to this appropriation bill affecting these Territories which are offered here, since there is another measure before us much more appropriate for the consideration and deliberation of the Senate, much more suitable to the case upon which we wish to act than this mode of proceeding by amendments to this bill.

I shall, for one, vote against all amendments that are proposed to be introduced into this bill for the establishment of a government, or for any regulation whatever, in regard to the Territories. But when this bill shall have been disposed of, if it be the pleasure of the Senate that the bill from the House be taken up, I shall propose to strike out all of the bill after the enacting clause, and insert the amendment which I laid before the Senate. I have no particular right to exhort the Senate; I claim no authority to hasten its proceedings; but I think we are all imperiously called on to make what despatch we can with this appropriation bill for the civil and diplomatic expenses of the Government. We all know what delays are continually occurring; we all see the reluctance that is manifested to-day by the great majority of the Senate to prolong the duration of our daily sittings. Should we not, then, proceed exclusively with the subjects appropriately belonging to this appropriation bill? There are many amendments to be proposed. There are some which I desire myself to propose; in doing which, I shall not occupy five minutes, however, because the time of the Senate is precious. I hope, therefore, that all these amendments regarding a government for California, which are proposed to be incorporated in the civil and diplomatic bill, may be rejected, as a more appropriate occasion is just before us — a measure which will naturally give rise to a discussion of this subject being

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now upon our table, and one which will be taken up in its order. And allow me to add, that I have avoided, and shall avoid, all discussion that is calculated to excite local or party feelings, or to disturb the progress of the Senate and the Government in making a proper present temporary provision for the government of California. Enough for this day — I will not say is the evil — but the duty thereof. Our duty is immediately, if we can, to give a practical and secure government to the people of California, and there, in my judgment, our present duty terminates. I have no idea that any remarks which I might feel disposed to make would be either gratifying or instructive to the Senate, and I shall, therefore, from a sense of duty, abstain from occupying further time in relation to this subject, at present.

Debate with Mr. Calhoun upon the Government of New Territories

UNITED STATES SENATE, February 24, 1849.¹

MR. WEBSTER. Mr. President, the honorable member from South Carolina (Mr. Butler), who has just taken his seat, says that he is prepared to say boldly that the Northern States have not observed, but have broken, the compromises of the Constitution.

MR. BUTLER (in his seat). I said it.

MR. WEBSTER. Yes, Mr. President, he said so. It is no duty of mine to take up a glove that is thrown to the whole world; it is no duty of mine to accept a general challenge. But if the honorable member shall see fit to be so obliging as to inform the Senate, in my hearing, on what occasions the State, whose representative I stand here, has forborne to observe or has broken the compromises of the Constitution, he will find in me a combatant on that question.

Mr. Butler rose to reply; but as there appeared to be some misunderstanding as to his possession of the floor for that purpose, he resumed his seat.

MR. WEBSTER. I would hear the gentleman with the greatest respect — a respect which I always feel for him; but what I mean to say is, that if he is to reduce what seemed to be a general charge to a particular charge, and if he shall undertake to specify or particularize any case in which the Legislature of the State whose representative I am has forborne to observe, or has broken, or attempted to break, the compromises of the Constitution, it will be my duty to meet that charge, and to

¹ In the debate on the amendments to the Civil and Diplomatic Appropriation Bill.

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defend the State, if I am able to do so. I do not intend to go into any such debate on this matter at present; other States will answer for themselves.

Mr. President, it is of importance that we should seek to have clear ideas and correct notions of the question which this amendment of the member from Wisconsin has presented to us; and especially that we should seek to get some conception of what is meant by the proposition, in a law, to "extend the Constitution of the United States to the Territories." Why, sir, the thing is utterly impossible. All the legislation in the world, in this general form, could not accomplish it. There is no cause for the operation of the legislative power in such a manner as that. The Constitution — what is it? We extend the Constitution of the United States by law to territory! What is the Constitution of the United States? Is not its very first principle that all within its influence and comprehension shall be represented in the Legislature which it establishes, with not only a right of debate and a right to vote in both Houses of Congress, but a right to partake in the choice of the President and Vice President? And can we by law extend these rights, or any of them, to a Territory of the United States? Everybody will see that it is altogether impracticable. Well, sir, the amendment goes on, and says that the revenue laws shall, so far as they are suitable, be applied in the Territories. Now, with respect to that qualification, made by the honorable member from Wisconsin, I should like to know if he understands it as I suppose he does. Does the expression "as far as suitable" apply to the Constitution or the revenue laws, or both?

MR. WALKER. It was not the proposition to extend the Constitution beyond the limits to which it was applicable.

MR. WEBSTER. It comes to this, then, that the Constitution is to be extended as far as practicable; but how far that is, is to be decided by the President of the United States, and therefore he is to have absolute and despotic power. He is the judge of what is suitable and what is unsuitable, and what he thinks is suitable is suitable, and what he thinks unsuitable is unsuitable. He is "*omnis in hoc*;" and what is this but to

say, in general terms, that the President of the United States shall govern this territory as he sees fit till Congress makes further provision ? Now, if the gentleman will be kind enough to tell me what principle of the Constitution he supposes suitable, what discrimination he can draw between suitable and unsuitable, which he proposes to follow, I shall be instructed. Let me say that in this general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States and over nothing else, and can extend over nothing else. It cannot be extended over anything except over the old States and the new States that shall come in hereafter, when they do come in. There is a want of accuracy of ideas in this respect that is quite remarkable among eminent gentlemen, and especially professional and judicial gentlemen. It seems to be taken for granted that the right of trial by jury, the *habeas corpus*, and every principle designed to protect personal liberty, is extended by force of the Constitution itself over every new Territory. That proposition cannot be maintained at all. How do you arrive at it by any reasoning or deduction ? It can be only arrived at by the loosest of all possible constructions. It is said this must be so, else the right of the *habeas corpus* would be lost. Undoubtedly these rights must be conferred by law before they can be enjoyed in a Territory.

Sir, if the hopes of some gentlemen were realized, and Cuba were to become a possession of the United States by cession, does anybody suppose that the *habeas corpus* and the trial by jury would be established in it by the mere act of cession ? Why more than election laws and the political franchises, or popular franchises ? Sir, the whole authority of Congress on this subject is embraced in that very short provision that Congress shall have power to make all needful rules and regulations respecting the *Territories* of the United States. The word is *Territories* ; for it is quite evident that the compromises of the Constitution looked to no new acquisitions to form new Territories. But as they have been acquired from time to time, new Territories have been regarded as coming under that general provision for making rules for *Territories*.

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We have never had a *Territory* governed as the United States is governed. The Legislature and the Judiciary of Territories have always been established by a law of Congress. I do not say that while we sit here to make laws for these Territories, we are not bound by every one of those great principles which are intended as general securities for public liberty. But they do not exist in Territories till introduced by the authority of Congress. These principles do not, *proprio vigore*, apply to any one of the Territories of the United States, because that Territory, while a Territory, does not become a part, and is no part, of the United States.

MR. CALHOUN. I rise, not to detain the Senate to any considerable extent, but to make a few remarks upon the proposition first advanced by the Senator from New Jersey (Mr. Dayton), fully endorsed by the Senator from New Hampshire (Mr. Hale), and partly endorsed by the Senator from Massachusetts, that the Constitution of the United States does not extend to the Territories. That is the point. I am very happy, sir, to hear this proposition thus asserted, for it will have the effect of narrowing very greatly the controversy between the North and the South, as regards the slavery question in connection with the Territories. It is an implied admission on the part of those gentlemen that, if the Constitution does extend to the Territories, the South will be protected in the enjoyment of its property — that it will be under the shield of the Constitution. You can put no other interpretation upon the proposition which the gentlemen have made, that the Constitution does not extend to the Territories.

Then the simple question is, does the Constitution extend to the Territories, or does it not extend to them? Why, the Constitution interprets itself. It pronounces itself to be the supreme law of the land.

MR. WEBSTER. What land?

MR. CALHOUN. The land; the Territories of the United States are a part of the land. It is the supreme law, not within the limits of the States of this Union merely, but wherever our flag waves — wherever our authority goes, the Constitution in part goes, not all its provisions certainly, but all its suitable

provisions. Why, can we have any authority beyond the Constitution? I put the question solemnly to gentlemen: if the Constitution does not go there, how are we to have any authority or jurisdiction whatever? Is not Congress the creature of the Constitution? does it not hold its existence upon the tenure of the continuance of the Constitution? and would it not be annihilated upon the destruction of that instrument, and the consequent dissolution of this confederacy? And shall we, the creature of the Constitution, pretend that we have any authority beyond the reach of the Constitution? Sir, we were told a few days since, that the courts of the United States had made a decision that the Constitution did not extend to the Territories without an act of Congress. I confess that I was incredulous, and I am still incredulous, that any tribunal, pretending to have a knowledge of our system of government, as the courts of the United States ought to have, could have pronounced such a monstrous judgment. I am inclined to think that it is an error which has been unjustly attributed to them; but if they have made such a decision as that, I for one say, that it ought not to be and never can be respected. The Territories belong to us; they are ours; that is to say, they are the property of the thirty States of the Union; and we, as the representatives of those thirty States, have the right to exercise all that authority and jurisdiction which ownership carries with it.

Sir, there are some questions that do not admit of lengthened discussion. This is one of them. The mere statement is sufficient to carry conviction with it. And I am rejoiced to hear gentlemen acknowledge that, if the Constitution is there, we are under its shield. The South wants no higher ground to stand upon. The gentlemen have put us upon high ground by the admission that their only means of putting their claims above ours is, to deny the existence of the Constitution in California and New Mexico. The Senator from Massachusetts, I say, in part, endorsed the proposition. He qualified it, however, by saying that all the fundamental principles of that instrument must be regarded as having application to the Territories. Now, is there a more fundamental principle than

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that the States of which this Federal Union is composed, have a community of interest in all that belongs to the Union in its federative character? And that the territory of the United States belongs to the Union in that capacity is declared by the Constitution, and that there shall be, in all respects, perfect equality among all the members of the confederacy. There is no principle more distinctly set forth than that there shall be no discrimination in favor of one section over another, and that the Constitution shall have no half-way operation in regard to one portion of the Union, while it shall have full force and effect in regard to another portion.

I will not dwell upon this. I will only listen, if gentlemen choose to go on, in order to discover by what ingenuity they can make out their case. It is a mere assumption to say that the Constitution does not extend to the Territories. Let the gentlemen prove their assumption. I hold the course of the whole of this debate to be triumphant to us. We are placed upon higher ground; we have a narrower question to defend; and it will be understood by the community that we are non-suited only by a denial of the existence of the Constitution in the Territories.

MR. WEBSTER. The honorable Senator from South Carolina alludes to some decision of the United States courts as affirming that the Constitution of the United States does not extend to the Territories, and he says that with regard to —

MR. CALHOUN. I hope the gentleman will state my position exactly right. I said I was told a few days since that they had so decided, but that I was incredulous of the fact.

MR. WEBSTER. I can remove the gentleman's incredulity very easily, for I can assure him that the same thing has been decided by the United States courts over and over again for the last thirty years.

MR. CALHOUN. I would be glad to hear the gentleman mention a case in which such a decision was given.

MR. WEBSTER. Upon a few moments' consideration I could mention a number of cases. The Constitution, as the gentleman contends, extends over the Territories. How does it get there? I am surprised to hear a gentleman so distinguished

as a strict constructionist affirming that the Constitution of the United States extends to the Territories without showing us any clause in the Constitution in any way leading to that result; and to hear the gentleman maintaining that position without showing us any way in which such a result could be inferred, increases my surprise.

One idea further upon this branch of the subject. The Constitution of the United States extending over the Territories and no other law existing there! Why, I beg to know how any government could proceed, without any other authority existing there than such as is created by the Constitution of the United States? Does the Constitution of the United States settle titles to land? Does it regulate the rights of property? Does it fix the relations of parent and child, guardian and ward? The Constitution of the United States establishes what the gentleman calls a confederation for certain great purposes, leaving all the great mass of laws which is to govern society to derive their existence from State enactments. That is the just view of the state of things under the Constitution. And a State or a Territory that has no law but such as it derives from the Constitution of the United States must be entirely without any State or territorial government. The honorable Senator from South Carolina, conversant with the subject as he must be, from his long experience in different branches of the government, must know that the Congress of the United States has established principles in regard to the Territories that are utterly repugnant to the Constitution. The Constitution of the United States has provided for them an independent judiciary; for the judge of every court of the United States holds his office upon the tenure of good behavior. Will the gentleman say that in any court established in the Territories the judge holds his office in that way? He holds it for a term of years, and is removable at executive discretion. How did we govern Louisiana before it was a State? Did the writ of *habeas corpus* exist in Louisiana during its territorial existence? Or the right to trial by jury? Who ever heard of trial by jury there before the law creating the territorial government gave the right to trial by jury? No one. And I do not

believe that there is any new light now to be thrown upon the history of the proceedings of this Government in relation to that matter. When new territory has been acquired it has always been subject to the laws of Congress, to such law as Congress thought proper to pass for its immediate government, for its government during its territorial existence, during the preparatory state in which it was to remain until it was ready to come into the Union as one of the family of States.

The honorable Senator from South Carolina argues that the Constitution declares itself to be the law of the land, and that therefore it must extend over the Territories. "The land," I take it, means the land over which the Constitution is established, or, in other words, it means the States united under the Constitution. But does not the gentleman see at once that that argument would prove a great deal too much? The Constitution no more says that the Constitution itself shall be the supreme law of the land, than it says that the laws of Congress shall be the supreme law of the land. It declares that the Constitution and the laws of Congress passed under it shall be the supreme law of the land.

MR. CALHOUN. The laws of Congress made in pursuance of its provisions.

MR. WEBSTER. Well, I suppose the revenue laws are made in pursuance of its provisions; but, according to the gentleman's reasoning, the Constitution extends over the Territories as the supreme law, and no legislation on the subject is necessary. This would be tantamount to saying that the moment territory is attached to the United States, all the laws of the United States, as well as the Constitution of the United States, become the governing will of men's conduct, and of the rights of property, because they are declared to be the law of the land — the laws of Congress being the supreme law as well as the Constitution of the United States. Sir, this is a course of reasoning that cannot be maintained. The Crown of England often makes conquests of territory. Who ever heard it contended that the Constitution of England, or the supreme power of Parliament, because it is the law of the land, extended over the territory thus acquired, until made to do so by a special

act of Parliament? The whole history of colonial conquest shows entirely the reverse. Until provision is made by act of Parliament for a civil government, the territory is held as a military acquisition. It is subject to the control of Parliament, and Parliament may make all laws that it deems proper and necessary to be made for its government; but until such provision is made, the territory is not under the dominion of English law. And it is exactly upon the same principle that Territories coming to belong to the United States by acquisition or by cession, as we have no *jus colonizæ*, remain to be made subject to the operation of our supreme law by an enactment of Congress.

MR. CALHOUN. I shall be extremely brief in noticing the arguments of the honorable Senator from Massachusetts, and I trust decisive. His first objection is, as I understand it, that I show no authority by which the Constitution of the United States is extended to the Territories. How does Congress get any power over the Territories?

MR. WEBSTER. It is granted in the Constitution in so many words: the power to make laws for the government of the Territories.

MR. CALHOUN. Well, then, the proposition that the Constitution does not extend to the Territories is false to that extent. How else does Congress obtain the legislative power over the Territories? And yet the honorable Senator says I assign no reason for it. I assigned the strongest reason. If the Constitution does not extend there, you have no right to legislate or to do any act in reference to the Territories.

Well, as to the next point. The honorable Senator states that he was surprised to hear from a strict constructionist the proposition that the Constitution extends itself to the Territories. I certainly never contended that the Constitution was of itself sufficient for the government of Territories without the intervention of legislative enactments. It requires human agency everywhere; it cannot extend itself within the limits of any State, in the sense in which the gentleman speaks of it. It is, nevertheless, the supreme law, in obedience to which, and in conformity with which, all legislative enactments must

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be made. And the proposition that the Constitution of the United States extends to the Territories so far as it is applicable to them, is so clear a proposition that even the Senator from Massachusetts, with his profound talent, cannot disprove it. I will put the case of some of the negative provisions of the Constitution. Congress shall make no law concerning religion, nor create titles of nobility. Can you establish titles of nobility in California? If not, if all the negative provisions extend to the Territories, why not the positive? I do not think it necessary to dwell any longer upon this point.

MR. WEBSTER. The precise question is, whether a Territory, while it remains in a territorial state, is a part of the United States? I maintain it is not. And there is no stronger proof of what has been the idea of the Government in this respect than that to which I have alluded, and which has drawn the honorable member's attention. Now, let us see how it stands. The judicial power of the United States is declared by the Constitution to be "vested in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish." The whole judicial power, therefore, of the United States is in these courts. And the Constitution declares that "all the judges of these courts shall hold their offices during good behavior." Then the gentleman must admit that the legislation of Congress heretofore has not been altogether in error; that these territorial courts do not constitute a part of the judicial power of the United States, because the whole judicial power of the United States is to be vested in one Supreme Court, and in such inferior courts as Congress shall establish, and the judges of all these courts are to have a life tenure under the law; and we do not give such tenure, and never did, to the judges of these territorial courts. That has gone on the presumption and true idea, I suppose, that the Territories are not even part of the United States, but are subject to its legislation. Well, where does it get this power of legislation? Why, I have already stated that the Constitution says "the Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States;" and it is

under that clause, and that clause only, that the legislation of Congress in respect to the Territories has been conducted. And it is apparent from our history that no other provision was intended for territorial government, inasmuch as it is highly probable, I think certain, that no acquisition of foreign territory was ever contemplated.

And again: there is another remarkable instance. The honorable gentleman, and his friends who act with him on these subjects, hold that the power of internal improvement within the United States does not belong to Congress. They deny that we can pass any law for internal improvements within any State of this Union, while they all admit that the moment we get out of the States into a Territory we can make just as much improvement as we choose. There is not an honorable gentleman on that side of the Chamber who has not, time and again, voted money out of the public treasury for internal improvements out of the Union, in Territories, under the conception that, under that provision of the Constitution to which I have referred, they do not constitute any portion of the Union—that they are not parts of the Union.

Sir, there is no end to illustrations that might be brought upon this subject; our history is full of them. Our history is uniform in its course. It began with the acquisition of Louisiana. It went on after Florida became a part of the Union. In all cases, under all circumstances, by every proceeding of Congress on the subject, and by all judicature on the subject, it has been held that Territories belonging to the United States were to be governed by a constitution of their own, framed by a convention, and in approving that constitution the legislation of Congress was not necessarily confined to those principles that bind it when it is exercised in passing laws for the United States itself. But, sir, I take leave of the subject.

MR. CALHOUN. Mr. President, a few words. First, as to the judiciary. If Congress has decided the judiciary of the Territories to be part of the judiciary under the United States, Congress has decided wrong. It may be that it is a

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part of the judiciary of the United States, though I do not think so.

MR. WEBSTER (in his seat). Nor I.

MR. CALHOUN. Again : the honorable gentleman from Massachusetts says that the Territories are not a part of the United States — are not of the United States. I had supposed that all the Territories were a part of the United States. They are called so.

MR. WEBSTER (in his seat). Never.

MR. CALHOUN. At all events, they belong to the United States.

MR. WEBSTER (still in his seat). That is another thing. The colonies of England belong to England, but they are not a part of England.

MR. CALHOUN. Whatever belongs to the United States, they have authority over, and England has authority over whatever belongs to her. We can have no authority over anything that does not belong to the United States, I care not in what light it may be placed.

But, sir, as to the other point raised by the Senator — internal improvements. The Senator says there is not a member on this side of the Chamber but what has voted to appropriate money out of the public treasury for internal improvements in the Territories. I know that a very large portion of the gentlemen on this side have voted to appropriate money out of the public treasury for improvements in Territories, upon the principle of ownership ; that the land in the Territories in which improvements are made has an increased value in proportion to the sums appropriated, and the appropriations have in every case been given in alternate sections. But many gentlemen here have even utterly denied our right to make them under that form. But that question comes under another category altogether. It comes under the category whether we have a right to appropriate funds out of the common treasury at all for internal improvements.

Sir, I repeat it, that the proposition that the Constitution of the United States extends to the Territories is so plain a one, and its opposite — I say it with all respect — is so absurd a

one, that the strongest intellect cannot maintain it. And I repeat, that the gentlemen acknowledge, by implication, if not more than that, that the extension of the Constitution of the United States to the Territories would be a shield to the South upon the question in controversy between us and them. I hold it to be a most important concession. It narrows the ground of controversy between us. We then cannot be deprived of our equal participation in those Territories without being deprived of the advantages and rights which the Constitution gives us.

On Salaries of Foreign Ministers

UNITED STATES SENATE, February 26, 1849.

MR. MANGUM's motion to appropriate nine thousand dollars for the outfit of a minister to the government of Chili, and nine thousand dollars for the salary of the said minister, being opposed by several senators, Mr. Dickinson proposed that the question of this salary and salaries of other foreign ministers should go to the appropriation committee so that the salaries might be graduated. He (Mr. Dickinson) said that he intended to vote against the increase of salaries, there being no more reason for raising them at this time than in days past, and because he thought that when it is done, it should be done correctly, with a view to relative as well as positive justice. We are, he said, going back to the days of economy, to the early and best days of the Republic, to the days of the first Presidents—and we have started by proposing nearly to double the salaries of foreign ministers.

To this Mr. Webster made the following reply.

Mr. President, this new proposition is one that I did not think would be introduced upon this occasion. I do not know, and will not undertake to say, whether, upon the whole, it is fit to be entertained and disposed of now. But, since the subject is up, I feel constrained to say, that this is a portion, a part, of the regulations respecting our foreign intercourse that does demand revision. We may talk of economy, and I hope we shall practise economy, but I am not for that species of economy that restrains representatives of this Republic, when they go abroad, from appearing in the character in which the representatives of other countries appear in this place.

Mr. President, you have been abroad. Other members of this body have been abroad in a public capacity. I never have

been and never shall be ; but I know enough to know that the allowances made to our ministers at foreign courts are wholly inadequate — yes, sir, wholly inadequate to the maintenance of a respectable character in public and social life. That I believe to be entirely wrong. The Senate understands that this whole matter depends upon the provisions made sixty years ago, when the expenses of living, either at home or abroad, were certainly not more than half what they now are. It stands as it stood in the time of Washington, upon the foundation of the statute which says, “The President may make such allowances as he thinks fit, not exceeding nine thousand dollars.” Has not the whole world changed ? The honorable senator from New York [Mr. Dix] has asked, what is supposed to be the salary of the French minister here ? Is Washington Paris ? Is life and the maintenance of the respectability of life as expensive in Washington as in Paris ? Sir, though never employed in foreign service, and certainly never expecting to be, I must state what I know to have occurred in one of the capitals of Europe, to a very respectable gentleman who was there representing this country — every way honorable and worthy to carry the commission of his country ; but restricted by the narrow means which his country afforded him, and not being a gentleman of fortune, he could not appear in public society, or on public occasions in the country where he was, as others appeared. He once heard this saying at some place where it was his official duty to be ; when the party were retiring and the carriages were called for, and the carriage of the American minister was called for — “What carriage is that ?” was asked. The reply was — no gentleman said it, no man of respectability said it, but the coachmen and hackmen all called out — “The poorest carriage here to-night.”

MR. DICKINSON (in his seat). So much the better.

MR. WEBSTER, I do not think so. If that is economy and republicanism, then so far I am no economist, and I am no republican. That is not my sentiment. I do not wish to see the representative of this Republic abroad, restrained

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from the enjoyment of that social intercourse, and the maintenance of that private respectability which becomes a gentleman. I have no sympathy for that sort of economy and that sort of republicanism which consists in merely denying money to those who represent you, and who wish to represent you respectably. That is my judgment upon these matters.

Sir, we know that this allowance, as it now stands, and as it has stood since the days of General Washington, was very much assailed and very much complained of by respectable persons, and by one very worthy gentleman in particular, who was some twenty or thirty years afterwards sent abroad in a public capacity. And it was as long ago as when I was in the House of Representatives that he asked me if I would not support a proposition to raise the salaries of our foreign ministers to fifteen thousand dollars. And it is said that this very gentleman, a very worthy and now a most venerable person, and who is one of the oldest public servants of the country still alive, could not sustain himself with reputation upon the allowance of the Government at the court to which he was sent. I would be quite obliged to that venerable gentleman — not so venerable then as now — if he would now give me sufficient facts by which I can answer his pamphlets against the expensiveness of General Washington's administration.

Resolution on Reciprocity with Great Britain

UNITED STATES SENATE, March 12, 1849.¹

THIS resolution, sir, is offered in consequence of information received by the very latest arrival from England. I find it stated, sir, in the advices by the last steamer at Halifax, and transmitted thence by the telegraph, that "M. Labouchere," who is the president of the Board of Trade in England, "has again brought forward the Government proposition for the modification of the navigation laws; and Mr. Bancroft, the United States Minister, states that to whatever extent in liberality the British Parliament may be disposed to legislate in this matter, he is ready and willing to sign a convention immediately, based upon the most complete reciprocity, so as to open the entire coasting trade of the two countries to the vessels of both nations."

My object, sir, for the present is only an inquiry. I suppose, if it be the pleasure of the Senate to adopt the resolution this morning, it may be answered before we finally adjourn. But if there be not an opportunity to receive an answer at this session of the Senate, one part of my purpose will at least be accomplished, which is, to draw the attention of the country to this most important subject. I mean to pronounce no par-

¹ "*Resolved*, That the President of the United States be requested, if in his judgment not incompatible with the public interests, to transmit to the Senate any instructions which may have been given to the Minister of the United States in London, offering a further extension of reciprocity and equality in the laws of navigation; and especially such instructions, if any, as contemplate the opening of the coasting trade of the United States to the ships and vessels of other nations."

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ticular opinion at present. All must agree that the subject is vastly important. And I confess I was a little startled to find that the American Minister, who is now remaining in England, has, at the present moment, and under existing circumstances, offered to act immediately in a proposition for a convention to throw open the whole coasting trade of the United States freely, and without discrimination, to British vessels.

I have only two things to suggest for the present consideration of the Senate and the country. One is, that, if we enter into this reciprocity with Great Britain, and open to her ships and vessels the whole coasting trade of the United States, we are bound, of course, to do the same thing to the Powers of the north of Europe, and to admit the ships and vessels of Bremen and other of the chief navigating States and countries of that part of the world to the same privileges.

Before this question is to be decided, it would be well for us to be brought to a consideration of the experience which we have had since we opened the trade between ourselves and certain Powers of Europe and certain Powers of America to the ships and vessels of third parties. And it will become us to see how far the interference of the ships and vessels of the northern part of Europe in the trade between the United States and Brazil, for example, has lessened or increased the interests of ship-owners in the United States and all those concerned in navigation.

Another thing to be considered is this: how infinitely small is the coasting trade proper between the ports of England and her European dominions, compared with the coasting trade of the United States. Why, sir, the coasting trade of the United States employs the greater part of all the tonnage of the United States. And that trade, as it is, and is to be hereafter, will employ our shipping in voyages, some of which will be the longest voyages prosecuted on the globe. They will be voyages from the Atlantic cities, on the north and northeastern coast, around Cape Horn, to California and Oregon. If any such proposition as it seems has been suggested should be adopted by the Government of the United States, it will follow that all the products or manufactures of the United

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States may be freely carried in British or other foreign ships, from Boston and New York, not only to New Orleans, but around the Capes to our own ports on the Pacific, as freely as they may be carried in our own vessels.

I repeat, it is not my purpose now to discuss the great and grave question connected with this subject, but to ascertain whether it be true, as suggested, that our Minister in England is authorized to enter into a convention which will uproot, substantially, the principles of our navigation laws as they have existed for sixty years. The subject, I repeat, well deserves the attention of the country.

If the Senate has no objection to pass the resolution to-day, I hope it may be passed, but if any gentleman desires that it should not be acted on to-day, it may lie over until to-morrow.

The resolution was agreed to.

On the Purchase of Manuscript of Washington's Farewell Address

UNITED STATES SENATE, January 24, 1850.

I RISE to express the readiness and the cordiality with which I concur in the resolution. I hope it will pass.¹ I believe it will be a resolution which will gratify the whole country. I believe it will be a thing which will be agreeable to all who may visit the Capitol, to see the Farewell Address of Washington, in his own handwriting, in the library. I agree in all that the honorable member from Kentucky (Mr. Clay) has said of the natural disposition of men, and of reasonable, intelligent men everywhere, in all countries, to see what might perhaps be called the relics of the great and good, who might be called the benefactors of their country.

The honorable member from Kentucky says, that a goblet in the possession of Washington in revolutionary times, is now in his own possession, in his own house. He says it is an object always gratifying not only to him and his family, but to those who visit him.

My principal purpose in rising was to mention an occurrence corroborative of that sentiment. It so happened that some five and twenty years ago there was offered for sale to Congress a little casket of medals from General Washington's cabinet. You know, sir, that the old Congress, the Congress of the Revolution, voted some seven or eight medals — I think not more — to distinguished officers of the revolutionary army; the first and principal and largest one being that presented to General Washington. They were struck in Paris, and for the subject

¹ The resolution was adopted.

of the obverse of his medal Washington chose his entry into Boston after the evacuation of that city by the British. It was beautifully executed, and was unquestionably a fine specimen of art. In like manner there were medals presented to Generals Gates, Greene, Morgan, and other revolutionary officers.

General Washington, at some after period of his life, collected these medals. They were all, I think, struck in Paris, and there were other medals also, of Dr. Franklin and other eminent persons in civil life, not struck at the instance of Congress, but of the French Government. General Washington collected these medals in a little casket, a little flat mahogany box. He placed his own likeness in the centre, and surrounded it with twelve others, making thirteen, to represent, as I suppose, the thirteen original States. This casket remained in his possession till his death, when it passed into the hands of his executors. About as long ago as I have mentioned, some five and twenty years, circumstances rendered it expedient for the persons who held it to sell it. They desired to sell it to Congress for the purpose of having it placed in the library. It was brought here by a member of the other House (Mr. Emory), who introduced a resolution authorizing the Committee on the Library to purchase it. This was a proposition which at first seemed to be received with favor. The price was not considered any great object; but a constitutional question arose whether Congress could, without a violation of its duty and obligations, buy that little casket, a relic which came from General Washington's cabinet. It was debated there two or three days, when, finally, by a vote of those who were opposed to the constitutional power, it was laid upon the table. I had kept my eye upon it, and when the debate ceased in the House of Representatives I sent and purchased the casket. Those medals are now in my library, together with numerous autographs of General Washington, and I can say that gentlemen from any part of the country, who do me the honor to visit me, if they are acquainted with the fact that I possess them, inquire first for General Washington's autographs and General Washington's medals.

A Personal Explanation in regard to Former Speeches on Slavery

UNITED STATES SENATE, March 25, 1850.

SOME persons, sir, are edifying the Senate and the House, and I suppose the country, by sending round a little scrap of paper, with my name at the top of it, and quoting from a speech delivered by me, in my place here, in 1848, if I mistake not, in which I said that "my opposition to the increase of slavery in this country, or to the increase of slave representation in Congress, is general and universal. It has no reference to the lines of latitude, or the points of the compass. I shall oppose all such extension, and all such increase, in all things, under all circumstances, even against all inducements, against all combinations, against all compromises."

I believe the passage has been quoted in the Senate.

MR. DAWSON. It has.

MR. WEBSTER. I undertake to say, that anybody who quotes that speech, for the purpose of showing any inconsistency between the sentiments I hold now, and those which I addressed to the Senate then, either does not understand the subject, or is not candid. There is no inconsistency. There is no inconsistency whatever, between anything which I ever said in the Senate, and the speech which I addressed to the Senate a fortnight ago. No man can show any such inconsistency. I have never voted for any increase of slavery, or slave territory; but I have said, that I will stand to the plighted faith of the Government; and if others have bound the Government by particular stipulations, I shall not set up my own individual opinion upon the constitutionality of the law creating those pledges. It is

not the part of a statesman so to act ; it is not the part of a member of Congress so to act ; and, lastly, it is not the part of an intelligent and honest man so to act.

I repeat, sir, that there is not a man in the country, here or elsewhere, of candor and intelligence, that can see for himself, and that will suggest to others, that there is a particle of difference between the remarks which I addressed to the Senate here some fortnight or ten days ago, and anything that was, either in 1848, or at any other time, or in any other place, spoken by me on this subject ; and the man who says there is, I repeat, is either not intelligent or not candid.

MR. HALE. I read the quotation in the remarks I made to the Senate the other day, certainly under no feeling of want of respect for the distinguished Senator from Massachusetts, and without expressing any opinion as to whether this is a discrepancy between the sentiments he advocated in 1848, and those which he advocates now. I made no assertion of that sort. . . . But, sir, the two speeches are before the country, and no assertion that I can make, and no denial that anybody else can make, can blind the common sense of the country to what they mean. If there is no discrepancy, the honorable Senator will seem to be right ; if there be a discrepancy, it is for the country to judge of it ; but in the remarks which I made, I gave the quotation, without stating whether there was a discrepancy or not.

MR. WEBSTER. If the honorable member did not make that quotation for the purpose of uttering or intimating a suggestion that there was an inconsistency, I cannot conceive for what purpose he did make it. He may — he may ; but I cannot see the object of his remark. Why, what is there that I have said since 1848 ? Any fair interpretation of my remarks in 1848 would mean, and can only mean, that I would be accessory to bringing in no new slave territory into the Union, and I have not been. It cannot be fairly construed to mean that I would seek to undo what Congress has done, to oppose my own opinion to the law of the land and the Constitution of the country.

Sir, I have always said and done whatever I could to resist

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the acquisition of slave territory. I voted against the war, because that war was made in order to obtain, by conquest, slave territory. I voted against the treaty, because that treaty was made for the purpose of bringing slave territory into the Union. How did the member from New Hampshire vote on the ratification of the treaty?

MR. HALE. I voted for it.

MR. WEBSTER. I supposed he did, so I do not stand upon the same ground with him in that respect. I voted against that treaty in 1848 as I would vote against it now; and if that gentleman had stood by me, and two or three other gentlemen on this side of the chamber, this controversy would never have arisen. We should have got paid our money, and if we had not, I should hardly have cared, provided we had not purchased this bone of contention. But the gentleman himself did vote for the treaty bringing in these new conquests, and now he is afraid there will be slavery there—now he is desirous of covering the white tops of its hills, and the barren sides of its mountains, and its useless valleys, under the protection of a law of Congress, against slavery. Why did he not keep out the territory, keep the question out, keep this controversy out?

Mr. Hale replied that he had been opposed to the Mexican war, but had voted for the treaty because peace was better than war, and he would take the best peace that he could get. He had impugned and impeached no man's motives.

MR. WEBSTER. This is not a question of motives; I do not throw myself back for protection upon the purity of motives; it is a question of opinion—a question of consistency. The gentleman says that he quoted this extract without saying there was any inconsistency about it; yet his whole argument now is to prove that there is such inconsistency. He says the whole country thinks so too. Sir, I do not take that gentleman's understanding of the opinion of the whole country as authentic, nor do I think him a competent witness to prove what the whole country's opinion is in regard to the con-

sistency of my opinions. He can speak for himself, and state his own impressions; but he is taking rather too large a jurisdiction to himself, when he stands up here to speak for the whole country. I demur, I hesitate, I doubt—I repel any such authority of the honorable member. I leave it to the country to judge and to speak its own opinions; I shall not say what is the sentiment of the country. I do not find myself competent to say, yet I trust I am nearly as competent as the member who undertakes to lay down what the sentiment of the whole country is. After all, I believe, sir, it comes pretty much to this: The gentleman's observations, if they did not originate in, are somewhat tinged by—they take a little flavor, an odor, a perfume from—the fact, not, it seems, at all agreeable to him, that a certain portion of the public press, which he says for a series of years has been unfavorable to me, now comes out in commendation of my speech and my sentiments.

Speech upon the Admission of California

UNITED STATES SENATE, April 4, 1850.¹

MR. PRESIDENT, I am far from entertaining any wish to prevent the honorable member from Arkansas (Mr. Sebastian) addressing the Senate on this topic, but I think it my duty to remind the Senate that we have now gone through the first four months of the session, and although I am willing to admit that the circumstances were such as to excuse or even justify a great deal of delay in the despatch of the public business, yet, after all, the time seems now to have come at which, with all convenient despatch, and without encroaching in any degree upon the freedom of debate, we should proceed to some action. Sir, I may be permitted to say that it will require weeks, and perhaps months, and our most deliberate attention and active co-operation in legislation, to do the things and pass the laws which will be necessary, when the question of the admission of California shall be decided one way or the other. I wish therefore to say, that, so far as my opinion and conduct in the Senate go, I shall endeavor to take such a course of voting and acting as may bring this question of the admission of California *per se* to a decision by the Senate. I am then willing to go on and take up the territorial question — the question of a government for the Territories; and I may say upon the whole that I am inclined to think the best way to proceed will be to take up the territorial bills and act upon them.

¹ In the debate on the compromise resolutions of Mr. Bell of Tennessee on the slave, California, and territorial questions. Mr. Foote of Mississippi had moved to refer them to a select committee of thirteen.

Sir, the honorable member from Kentucky (Mr. Clay), who moved a series of resolutions on these subjects, whom I have now the honor of addressing as the occupant of the chair, will, as a matter of right, if he chooses to exercise it at a convenient hour, be entitled to reply to the remarks which have been made upon his propositions. That is a matter of courtesy due to every member of the Senate, and it is especially due to him. There is also an honorable member from Tennessee (Mr. Bell) who has brought forward a series of resolutions. He, too, is entitled to be heard in reply to objections which have been suggested to his propositions. I do not mean to say that the debate should extend no further, but it is my judgment that it becomes us to consider whether we will discuss one question to-day, and another to-morrow, without coming to any result upon the great question before us.

Sir, as far as depends upon me, as I have said, there will be by no vote of mine any restraint upon debate at all — none at all. But I think we ought to bring the subjects so as to have a tendency to some point — that, instead of postponing these resolutions, one or the other series, from day to day, and keeping them all open to debate, we ought pretty soon to come to a resolution to take up some measure of a practical character, and debate it till we are ready to act upon it. That is my view. The two precise questions, or the two forms in which the questions are presented, most fit I think for practical action, are the amendments moved by an honorable member from Missouri (Mr. Benton) to the resolution of an honorable member from Illinois (Mr. Douglas), by way of amendment to that resolution, instructing the Committee on the Territories to bring in a bill for the admission of California, unconnected with any other subject; and the bill which, before we had time to come to any resolution upon that point, or to any vote upon that question, has been reported.

Now, it appears to me, sir, with great deference to the judgment of others, that our true course now is to take up the bill reported from the Committee on Territories, for the admission of California, and debate it. I mean to say that it is our true course, in my opinion, to adopt that procedure, after the

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honorable member from Kentucky (Mr. Clay) and the honorable member from Tennessee (Mr. Bell) have had a proper opportunity to reply to the objections which have been urged against their respective propositions. At the same time, I wish to say to the honorable member from Mississippi (Mr. Foote), that though I have no objection to come to a vote upon his proposition, yet I cannot conceal from him—and I do not wish to conceal from the country—that my opinion is, that we have now come to a point upon this general subject, which every one is as well informed of as he can possibly be after any report of the committee. My opinion is, that we had better proceed to take up these subjects, beginning at the beginning. I am unwilling, I will take occasion to say—if the Senate will not consider me as too much trespassing on its attention—I am unwilling to leave any of these questions open, to be the cause of heart-burnings, and dissension, and dissatisfaction through the recess (if we are to have any recess—which may be much doubted). I am for acting on California, and then on the territorial bills reported to us from the Committee on Territories. I am for taking them up and voting upon them; and if any amendments are made, such as have been suggested, I am ready to vote upon any such amendments. And my opinion is, sir, that we can do nothing so important to the satisfaction of the country—nothing that will relieve men's minds from apprehension—nothing that will give such general quietude, as to act as soon as is convenient and proper upon the bill for the admission of California, and then upon the bill or bills for the creation of the territorial governments in New Mexico and the rest of the Territories, and pass a bill such as the majority of the Senate shall approve. That is my judgment; and in pursuance of these opinions, and according to these opinions, will be my conduct here.

I wish this body to come to a conclusion upon California; my opinion is made up. I wish this body then to come to a conclusion upon the character of the territorial bills. I am willing to act upon them on the principles and opinions which I have already avowed; and I apprehend, sir, an entire con-

currence in these opinions by a majority of this body; and my conviction is, that when these bills shall come up, and this body shall come to a decision upon them — upon what may be called the contested part of them — the majority of this body will come to a conclusion exceedingly useful to the country, in extending to it more harmony, quiet, and satisfaction.

Sir, I desire — if I may say so — to preserve the credit of this great republican government in the estimation of men all over the world. I do not wish to hear it said on the other side of the Atlantic, that this great, constitutional, free representative government cannot go on with certainty and despatch, and without impediment; that it is liable to a great *hiatus* every now and then; that the great principle of free government is likely, after all, not to be so satisfactorily exemplified in this great republic as its friends at home and abroad have fondly hoped and predicted. I am desirous that we should take such a course in regard to these exciting questions as will enable us to dispose of them, and to resume and go through with our ordinary duties of legislation. And I will take occasion to say, sir, that I do not expect to see harmonious legislation upon any of the subjects which touch the great interests of the country until this question shall be settled. There are great questions — highly important questions — for the decision of which the country, North and South, and in the centre, have looked with great interest to the action of Congress at this session. For one, I despair of any wise, and temperate, and just legislation until these disturbing questions be removed; and therefore I wish that the questions that have been brought upon us by the events of the last two or three years, somewhat unexpectedly, shall be settled. I wish them to be settled upon the true principles of the Constitution of the United States. I want no new platform. I ask no new concessions on the one side or on the other — no new compromises; the Constitution is enough; it is broad enough, full enough, efficient enough; and if we can bring ourselves to act with moderation, and temperance, and candor, and magnanimity, and I will add, with, what is equally important, a fraternal regard and sympathy upon the questions before us, in the spirit of the Consti-

tution, we shall be able to rescue the country from its present perils. We who sit here, clothed with this high authority for the moment, are, I firmly believe, able to rescue the country from its present embarrassing condition, and to satisfy the public judgment and the public feeling of the extreme North and the extreme South, and from one ocean to the other.

Sir, I beg the indulgence of the Senate for wandering into these general remarks. I had no intention so to do when I rose; but I must now express my sincere, deliberate conviction, that our true course is to proceed onward, step by step, with the great subjects that have been devolved on us by recent events, by the acquisitions that have been made by this Government of these great Territories, and to take them up, and act upon one and all in the spirit which the Constitution of the United States prescribes to us all, enjoins upon us all, as it is our duty to conform to that spirit in all our legislation.

Well, when gentlemen shall have satisfied themselves on these propositions, and when, as I have said, the movers of the propositions shall have had all the opportunity they desire for replying to the remarks that have been made, I shall feel it my duty to bring to the attention of the Senate practical measures, with the view of their being decided upon, one after the other, in the order in which they may have been presented.

On Duties of Neutrality

UNITED STATES SENATE, May 21, 1850.¹

MR. PRESIDENT, I regret that the honorable member from Wisconsin has thought it necessary to offer the amendment which he has proposed, because it seems rather offensive in its terms. It is not, perhaps, quite regular to demand by what authority an act has been done until the inquiry be first answered whether such an act has been done. I hope, therefore, that the honorable member will see the propriety of withdrawing the amendment. If he does not, however, I shall vote for the whole resolution.

Mr. President, I am somewhat surprised at some of the propositions stated by the honorable member for Florida. He says it looks to him as if this were a declaration of war without the authority of Congress. Against whom? or against what country?

MR. YULEE. Not a declaration of war. I said that the instructions involved an act of war.

MR. WEBSTER. An act of war, then. Against whom? Against what government, what country, what colony, what province? It is important that we should govern ourselves

¹ Mr. Yulee of Florida offered the following resolution:

“Resolved, That the President of the United States be requested to inform the Senate whether any and what information has been received by the Executive Department respecting an alleged military expedition against the island of Cuba, and to communicate to the Senate copies of all correspondence and orders relative thereto.”

Mr. Walker of Wisconsin asked the consent of the Senator from Florida to submit this amendment: “And that he be requested to inform the Senate by what authority he has sent an armed vessel or vessels for the suppression of such insurrection, if such be the fact.”

by some distinct understanding of the neutral duties of this Government, and of the duties of all the citizens of this Government, established by standing law. If we mean to be neutral, as between a government and any party assailing it at home or abroad, we are to consider what our treaty stipulations are in the first place, and upon what relations we stand to the government of that country. Now everybody knows the stipulations of peace, amity, and good will contained in all our treaties with Spain ; and probably every member of the Senate knows that in the diplomatic history of this country, at different times within the last thirty years, so far as the executive Government could pledge the country to a particular line of policy, over and over, and over again we assured the Government of Spain that if Spain should not voluntarily relinquish Cuba to any European power the United States would do towards her every office of kindness and good will to maintain her in possession of that island ; that the United States would look with great jealousy and great alarm at any voluntary surrender of Cuba to a European power ; and that if Spain would abstain from that, she might be assured of the good offices and good will of the United States, and the friendship of the United States to maintain her in possession of the island. I do not mean to say how far those communications to the Spanish Government bind Congress or the country ; I only mean to say that they have been made at different times, as far back at least as General Jackson's administration ; and they have been made for the purpose of impressing on Spain the great importance of our peace and her regard for us, and of preserving that island in her possession and under her authority. These significations of the purpose of the executive Government have been uniform, and they have been published from time to time, and I never heard of a complaint of them in any part of the country.

But now let us come to the direct question. What is it that is complained of ? It is said that the President of the United States has directed a portion of the naval armament of the country to the coast of Cuba for a certain specific purpose ; and if the facts are as they are generally believed to be, for

a purpose not only perfectly legal and perfectly constitutional on the part of the Executive of the Government, but a purpose made his especial duty by positive statute. If there is any case, it is a case of this kind. A military expedition has been fitted out, or begun to be fitted out, in the United States, to act against the island of Cuba, now belonging to the Spanish Government. And it is not material, if such be the fact, if it be fitted out, or begun to be fitted out or prepared, according to the language of the statute, in the United States, whether by the citizens of the United States or by others. The law prevents the thing being done in the United States. Now, I suppose that whatever action the President has taken on this subject, is founded upon information that this is a military expedition, prepared and set on foot in the United States, in whole or in part. Well, then, if that be so, the law makes it his express duty, wherever he can exert the military and naval power, within the limits and jurisdiction of the United States, to exert it to defeat such an expedition. And, in the next place, if a United States vessel is found on the coast of Cuba, intending to violate this law of the country by helping to carry on a military expedition against Cuba, that vessel is just as much within the jurisdiction of the United States — for that is the word of the statute — as if she lay in the Potomac River. I suppose that nobody doubts now that the jurisdiction of the United States is in and over, protecting for the benefit of the United States, and protecting for the benefit of other countries, all that are under the flag of the United States, whether that flag floats upon the sea, or even in the harbor of a foreign port. I believe that some time ago an honorable member from Ohio doubted that, and I believe that an honorable member from New York quoted the sentiment, and said that nobody believed it. However, I take it to be unquestionable law, settled upon the surest basis of the national code. If that be so, the President of the United States is bound in duty, wherever he finds the jurisdiction of the United States extending on the sea or on the land, if persons are engaged in violation of the law of Congress, by use of the naval and military power of the United States to prevent it. Such is the language of the law,

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“by the military and naval armament of the United States.” And why is he to use the naval armament of the United States, unless there is something that can be lawfully done with it upon the sea? I cannot persuade myself that the honorable member from Florida has read the act of 1818 with his usual diligence and acuteness. I say that that act not only gives power to the President, but imposes it upon him as a duty, an active and diligent duty, to preserve the peace of the country by suppressing every unauthorized expedition set on foot in the United States, against any portion of a country, province, or colony with which we are at peace.

I will not go into this subject at any very great length. But pray, what does the honorable member from Florida mean? How does he mean to be understood when he says that if at home nothing could be done without process or warrant? That is not the language of the law nor the language of the Constitution; nor is it consonant to our general ideas of the authority of the President under the Constitution. If an insurrection breaks out, may not the President suppress it by an armed force? If a squadron were coming up the Potomac River to burn the capital, may he not resist it with a naval force? If there were an insurrection of colored persons breaking out anywhere, threatening the overthrow of the laws and institutions of the country, must he stop for a warrant? Sir, it is made his duty to execute the laws; and where there is an open, a flagrant, a dangerous violation of law, it is his duty to come with the proper force of the country to the rescue of the violated law, and to reassert and re-establish it.

I do not know what are the precise facts in this case, but I have no apprehension at all that it will be found that anything has been done which should not have been done, or that anything is intended which should not be intended. I have not the least doubt that whatever has been done in the case has been done upon full consideration; and that the answer to this inquiry will show to the country that no step has been unadvisedly taken, and that no object has been cherished but the general, salutary, beneficial one of preserving the peace of the country.

But the honorable gentleman went somewhat further. He says that if a landing be made on the island of Cuba under the flag of the United States, it is a breaking out of civil war, in regard to which we must be neutral. Why, certainly we may be neutral if no act for carrying on that invasion and raising that flag of the United States in Cuba has been done, or attempted to be done, or set on foot, or prepared, according to the language of the statute, in the United States.

MR. YULEE. The Senator seems to have understood me as saying the flag of the United States. I did not say so. I said that the moment the revolutionary flag was raised there was a civil war, and there were two belligerent parties.

MR. WEBSTER. It is the same thing. The honorable member says that when a revolution breaks out it is a civil war, and in a civil war we are bound to be neutral. Very well. But it is no neutrality at all to suffer preparations for war — military armaments — to be fitted out and sent from this country to carry on that war. That certainly is not neutrality ; and that is exactly what the statute of 1818 intended to prevent. The statute was that no such civil commotions should be aided by military armaments fitted out in the United States ; that being supposed to be against the general law of neutrality.

The honorable member, while speaking of the particular circumstances of this case, indulged in a general remark. He fears that there is a disposition (running through various acts of the present Administration) which inclines more to that side of these questions which is not the republican side. That is a matter of opinion into which I shall not enter. It is not very pertinent to the question now before the Senate. I can only say that, for one, I have seen no evidence of such intention or sympathy manifested by the President of the United States. I believe he means to execute the laws of the country honestly, fairly, and firmly, as I hope he will do, as I trust he will do, as I believe he will do. As to the rest, sir, I know nothing to lead me to suppose that he is not as good a republican as any of us.

Remarks upon Removals from Office

UNITED STATES SENATE, June 4, 1850.¹

MR. PRESIDENT, I had hardly supposed that it was the purpose of the honorable member from Maine to bring this resolution to a vote of the Senate. I had hardly supposed that it was the purpose of those members of the Senate with whom the honorable member from Maine usually acts, to press a resolution so entirely unprecedented, so incapable, as I think, of producing any good, and so likely to produce evil results. It may be, and probably is, that in this view of the opinions and purposes of gentlemen I am mistaken. The resolution seems to be pressed to a vote, and I wish therefore, before my name shall be recorded upon the question of the passage of the resolution, to say a very few words.

My inclination, Mr. President, is to oppose, in the practice of the Senate and in the practice of the Government, whatsoever is new, unnecessary, and not apparently adapted to produce any considerable good. The difference and lines of demarkation between the different departments of the Government must, to a great extent, be settled by practice and

¹ Mr. Bradbury of Maine, on December 24, 1849, submitted the following resolution :

“ *Resolved*, That the President be requested to cause to be laid before the Senate all charges which have been preferred or filed in any of the departments against individuals who have been removed from office since the 4th day of March last, with a specification of the cases, if any, in which the officers charged have had opportunity to be heard, and a statement of the number of removals made under each department.”

The resolution came up for consideration June 4, 1850, and Mr. Webster made the remarks here printed.

usage. This is true of our Government; it is true of all governments. And whatsoever may be considered as a mere right when a question arises, it is always a wholesome rule to consider what has been the settled and continued practice of the Government. Certainly, sir, there is no precedent for such a resolution as that which the honorable member from Maine recommends to the Senate for its adoption. I think there is as little foundation for it in any constitutional principle or provision, as there is in the past history of the Senate and of the Government.

That the President of the United States does in fact hold and exercise the power of removing from office all persons under the Government who have not a different tenure from that which belongs to officers at will, must be admitted. I am of the number of persons who have always believed, since I looked into the matter, and since I have examined it, that the original decision of Congress in this respect—the original construction which Congress put upon the Constitution in this respect—was wrong. I have ever entertained the opinion that the true construction of the Constitution was, the removing power never existed rightfully, and was never expected to exist, except as a part of the appointing power. That is the true analogy which this case bears to other cases. The authority that holds the appointing power over offices naturally draws into its own hands, as a consequence, the removing power, because the appointment of one person to an office is necessarily the removal of the incumbent of that office. And so the appointing power, with only one exception, so far as I know, is the same as the removing power. They are both parts of the same power.

There is, sir, in the English Government, springing out of a particular consideration, one anomalous instance in this respect. By the charter of the East India Company it is provided that the Governor-General of India shall be appointed by the Crown. But, considering the great interests which the company have in the faithful and able administration of that high office, the charter provides that, though appointed by the Crown, and though he can be recalled by the Crown at its

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pleasure, the Governor-General of India may be removed by a vote of the East India Board of Directors. That power has been exercised only once, I believe; and that was in the case of Lord Ellenborough, some five or six years ago. But generally in that country, from which our definitions of power, and of executive power particularly, as distinct from legislative power, come, the understanding in all cases is that the power of appointment draws after it, as a necessary consequence, the power of removal, if there be no tenure fixed by law.

I have looked recently, though not for the first time, into the debates which took place in Congress when that construction of the Constitution was fixed at its first session. You know, sir, that the Senate of the United States, at that time and for several years afterwards, sat with closed doors. There were no debates of the Senate published up to the year 1794, I think. But this question was debated in the House of Representatives at great length. The speeches made there were reported and published. The idea that the President possessed a removing power, without the consent of the Senate, seems to have been chiefly supported by a very able speech from Mr. Madison, whose opinions, as one engaged in framing the Constitution, upon constitutional subjects were regarded, and have ever been regarded, as very high authority. His judgment appears to have prevailed with the House of Representatives on that occasion. I have understood that the vote affirming that power in the President passed the Senate by the casting vote of the then Vice President, Mr. Adams. The question arose upon the constitution of the department of the Treasury; and the question was, whether the head of that department should be removable by the President? Now, whatever my opinion may have been, or is, as to what was the original intention of the Constitution, the actual practice under that instrument has not been in accordance with my opinion. I have found it a settled question, from the decision of Congress, made directly on the point, at its first session, down to the present day, under every Administration. The President of the United States has, in more or fewer instances, of his own authority, removed an incumbent from office; and if made during the

vacation, it has been regarded as creating a vacancy, which the Constitution authorized him to fill of his own accord until the next meeting of the Senate.

In 1835, I think it was, this matter was debated in the Senate. A bill passed the Senate, if I mistake not, making some general provision applicable to this subject. But, according to my recollection, it was never taken up in the other House, and never became a law. Now, if any proposition were before the Senate such as was contained in that bill of 1835, as a general provision, I should be as willing now as I was then to sustain it, because I am one who do conscientiously believe that the extent of executive power over those who hold office in the country is one of the existing evils of the time, and one which endangers the harmonious action of the Government. Especially is it one which creates an interest in persons in office and persons out of office, the one to maintain and the other to oust the possessors of office. For the time being it excites an energy, in that respect, founded too often, as we must all admit, upon considerations of a private object and of a private nature.

But, sir, since the practice has become a settled practice, since every Administration has indulged in it, and since it must now be considered, as the legal construction of the Constitution, that it is one of the powers of the President to remove incumbents from offices which they hold, it follows, as a necessary and as an inevitable consequence, that this power, thus legally vested in the President, must be exercised by him as independently of our control as any other power that is to be exercised by him under the Constitution. If he holds the power, he holds it to be exercised at his own control and discretion. And I see no ground upon which we can call upon him to give us reasons for the manner in which he exercises that power, any more than we can call upon him to give reasons for the manner in which he exercises any other power under the Constitution. Or, on the other hand, that we have no more right to call upon him to account to us for the manner in which he exercises a power solely confided to him, than he has to call upon us to give him reasons for the manner in

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which we exercise a power solely confided to our hands. And I think, therefore, it would be against what is the settled construction of the Constitution, and the practice of the Government, for us to make any such requirement of the President.

It must be borne in mind that we are not now acting under the plausible notion or idea that we may make this call as being ourselves a part and portion of the executive or appointing power, for this proceeding is brought up while the Senate is acting in its legislative capacity. It is no more properly here, or to be properly entertained here, than it would be in the other House of the national Legislature. The House of Representatives may make a general inquiry of the President for the reasons for removals in detail, or Congress may ask for the reasons of removals in every case, extending down to the postmasters, in detail and *seriatim*, with just as much propriety, it seems to me, as we can pass this resolution. I consider it, therefore, entirely subversive of the practice of the Government; and though I do not mean to use a term of any severe application, I must say that I consider it an invasion of the undoubted authority of the President upon the settled construction of the Constitution, for the exercise of which authority he is no more answerable or to be made answerable to us, than we are answerable or to be made answerable to him. The powers of the departments are not all mixed up in a jumble. They are separate, and are made separate by the Constitution; and have hitherto been kept separate by the practice of the Government. I hope they will continue to be kept separate, for then there is a just responsibility. If every department acts within its own power, it takes the responsibility belonging to its power. But if the powers of two or more departments are mixed up irregularly and jumbled together, there is no just responsibility upon anybody.

Every consideration therefore of propriety, as well as the written text of the Constitution, requires that the powers assigned to one department of the Government shall not be interfered with or intermeddled with by another. For these reasons I shall, most assuredly, record my vote against this resolution, if it is pressed. I should prefer, when gentlemen

have made such observations upon it as they think fit, if I might do so without any umbrage to the honorable member from Maine, to move to lay his resolution upon the table.

But now, sir, I do not feel at liberty to depart from this subject entirely, without saying a word or two bearing more directly upon what may be called the merits of this resolution. Whatever has occurred as being worthy of remark in impugning the course of the Administration, has been fully set forth by the honorable member from Maine (Mr. Bradbury). Whatever has occurred as being worthy of remark in justifying that course, either by its own merits or by way of comparison or contrast with previous Administrations, has been set forth at much length by the honorable member from Connecticut (Mr. Smith). I do not propose to follow in the track of those gentlemen, and say anything of the particulars of the case.

But I feel bound in duty to say, that, so far as I know, in that part of the country with which I am most acquainted, I have heard of less complaint of unfit removals from office, or of improper removals from office, under this Administration, than has occurred under any Administration coming newly into power within my recollection. I cannot speak for the whole country, but I can speak pretty confidently of that part of the country in which I reside; and I believe the remark is true of all parties there, taken as a whole and in the aggregate. My opinion certainly is, that the present Chief Magistrate of the United States has in his temper and character nothing unkind or proscriptive. I believe, so far, he has borne his faculties meekly. He is of a calm and kind temperament. He wishes evil to nobody. But at the same time he has firmness and decision enough, when he perceives what he thinks to be the line of his duty, to travel it without fear of consequences. As I believe him to act in this spirit, and with this purpose, I shall, so long as his measures appear to me to be conducive to the welfare of the country, give them my cordial support.

Remarks on the Boundaries of Texas

UNITED STATES SENATE, June 7, 1850.¹

IN the debate upon the Compromise Bill for the admission of California into the Union, to establish territorial governments for Utah and New Mexico, and making proposals to Texas for the establishment of the western and northern boundaries, Mr. Mason of Virginia in closing his remarks said that he differed from Mr. Clay, who had said that the Supreme Court would not find for the State of Texas so favorable a boundary as the bill under consideration proposed. Mr. Mason stated that he understood the rule of decision by the Supreme Court to be, on every question of boundary arising under a treaty, to conform their judgment to the actions of the Federal Government, and strictly to adopt that as the true boundary which the Government *assumed* as the boundary. Citing the case of *Foster v. Elm*, he said that the opinion of the court was, that questions of boundary between nations were *political*, and in deciding such, the Supreme Court must take for its guide the acts and determinations regarding it, of the Government of which it was a co-ordinate department. Now suppose, he said, this case went before the Supreme Court, and it was said you must look to the *actual* title to the country west of the Nueces. An answer would be given at once by the political action of the Government on this subject. He submitted, therefore, that, whatever opinions may have been sustained before the war with Mexico as to the southern boundary of Texas, that boundary was definitely settled by the act declaring war to exist.

¹ See Mr. Webster's speech, "The Boundaries of Texas," in *Collected Works*.

In reply Mr. Webster spoke as follows :

I look upon this as a very important part of this measure, and I think it deserves full consideration. I have never desired to see great political questions referred to the judiciary of the country. I much prefer that they should be settled by Congress, or by some form of compromise. It has always seemed to me that such questions are better adjusted in one or other of these two modes, than by a proceeding at law. Nevertheless, sir, in answer to the honorable gentleman from Virginia, I must say that I see no difficulty whatever in bringing this question to trial before the Supreme Court of the United States; not the slightest. The controversy respects territory or land claimed by the United States on the one side and the State of Texas on the other. That it is a territory of the United States, and not a part of a State, is the very thing which gives the United States a right to sue; and the Supreme Court must decide the matter ultimately, unless it is decided by a mutual agreement between the United States and the State of Texas herself. Now, the honorable member will remember that although a State cannot now be sued by an individual of another State, or by the subject of a foreign State, yet a State may still be made a party to a suit at law. One State may sue another in the national judiciary, and not only is that so, but wherever a State is a party, the jurisdiction of the Supreme Court becomes original, and an action may be brought in the Supreme Court of the United States, not by way of appeal from the decision of any inferior court, but directly, by original process issuing out of the Supreme Court. The judicial power of the United States, and the jurisdiction of the Supreme Court, original or appellate, extends to every case in which the United States is a party; and the original jurisdiction of the Supreme Court extends, as I have already said, to every case in which a State is a party. I believe that thus the matter stands. So that, in point of legal authority and constitutional power, there is nothing at all in the way of bringing a suit at once by the United States against the State of Texas for the settlement of this boundary. But the member from Virginia is quite right in saying that, should this question

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come before the Supreme Court, that court, in deciding it, must regard what has taken place in the executive and legislative branches of the Government. In the case to which the gentleman refers, and which I well remember, for I think I had something to do with it, the Chief Justice said: "The language of treaties is addressed to governments and not to courts." I believe that is the expression, although I have not read the case for many years, but that decision was given on the ground that, in settling questions of boundary between the United States and other Powers, the boundaries in which those Powers have been interested heretofore, and which boundaries have been the subject of treaty, — that decision does go upon the ground that the Supreme Court is bound to look to — I will not say absolutely bound by — the course which the executive and legislative departments may have taken.

I do not think, sir, that, under the circumstances of this case, it is a fair case for compromise. I shall be most happy for one, if, in the further progress of this bill, a provision may be made likely to be satisfactory to Texas; and although I would not wish to buy what is already our own, yet I would buy peace. Every individual who buys peace comes to terms of accommodation, without the formal surrender of any claim; and I think this a proper occasion to put an end to a troublesome dispute between the United States and Texas. I for one shall not regard any moderate and reasonable cost which might be incurred to bring about that amicable adjustment.

**Diplomatic Papers Hitherto
Uncollected**

Seizure of American Vessels

Mr. Webster to Mr. Everett.

DEPARTMENT OF STATE, Washington, 20th November, 1841.

SIR: Although the Department is yet without advice of your arrival in London, I indulge the hope that ere this you will have reached that city, and, having received the archives and other effects of the Legation from Mr. Aspinwall, that you are prepared to enter on the discharge of the duties of your mission. It is not doubted, in that event, that you will have given the records of the Legation your early attention, and that you will have perceived, upon a perusal of the recent correspondence between the late Minister of the United States in Great Britain, and Her Britannic Majesty's Secretary of State for Foreign Affairs, that among the several subjects which have been discussed between them, those of the most commanding interest and highest importance are, 1st: The capture and destruction of the Steamboat *Caroline*, at Schlosser, in December, 1837, and the murder of an American citizen by an armed expedition from the Province of Canada, acting under the command of officers in Her Majesty's service; 2dly: The seizure, search, and detention, by British armed cruisers, of American vessels, principally on the western coast of Africa, under the pretence that such vessels were engaged, or intended to engage, in the African Slave Trade.

There are other points remaining unsettled in the relations between the United States and Great Britain, — especially that respecting the northeastern boundary of the United States, — which are in a course of negotiation between this Department and the British Legation here: but to these it is now only necessary to allude generally: — those of the greatest urgency, weight, and delicacy, under discussion in London, at the present

time, are the two first mentioned. Mr. Stevenson's correspondence with this Department reaches down to the 22d ultimo. His last despatches have come to hand too recently to have received as yet full consideration. Instructions will be given you, relative to these important subjects, in due season ; and whilst these instructions are in the course of preparation and transmission, the President directs me to invite your particular examination of the correspondence upon them above referred to.

I am, Sir, your obedient servant,

DAN'L WEBSTER.

EDWARD EVERETT, ESQR., &C., &C., &C.

The Falkland Islands

Mr. Webster to General Don Carlos Maria de Alvear.

DEPARTMENT OF STATE, Washington, 4th December, 1841.

TO THE BRIGADIER-GENERAL DON CARLOS MARIA DE ALVEAR, &c., &c., &c.: The undersigned, Secretary of State of the United States, has the honor to acquaint General Alvear, Minister Plenipotentiary and Extraordinary of the Argentine Confederation, that the President, desirous of removing every impediment in the way of a good understanding and of cultivating relations of perfect harmony between our two governments, has with that view taken into consideration the note of General Alvear to Mr. Forsyth of the 21st of March, 1839, asking reparation for the conduct of Captain Duncan at the Falkland Islands in 1831, when in command of the United States sloop of war Lexington, and in respect to certain persons found by him there whom General Alvear claims to have been citizens of Buenos Ayres.

The undersigned has been directed to represent to General Alvear as the result of that consideration, that it is presumed the propriety of suspending, still further, a decision upon the application contained in his note will be obvious, even if, for argument's sake, it be allowed that Captain Duncan had no reason to doubt that the Argentine Government had, at the period mentioned, a Colony at the Falkland Islands and that his proceedings there and against the persons referred to took place notwithstanding that knowledge on his part; for it is notorious that Great Britain soon afterwards entered upon and has ever since continued in formal and actual possession of that territory, claiming under a previously existing right. The right of the Argentine Government, therefore, to jurisdiction over it being contested by another power, and upon grounds of

claim long antecedent to the acts of Captain Duncan which General Alvear details, it is conceived that the United States ought not, until the controversy upon the subject between those two governments shall be settled, to give a final answer to General Alvear's note, involving, as that answer must, under existing circumstances, a departure from that which has hitherto been considered as the cardinal policy of this government.

If, however, it may justly be expected that the Argentine Government will acquiesce in the expediency of postponing that affair for the present, it is believed that there can be no good reason why the two governments may not proceed to the transaction and adjustment of such other pending business between them as may not necessarily be connected with the question of the Falkland Islands. The undersigned is consequently directed to apprise General Alvear that he will be happy to receive from him such communications upon other subjects as he may have occasion to make, and that the President, should the Argentine Government concur in the views which have now been suggested, will take an early opportunity to renew the intercourse between the two governments by means of a diplomatic agent of the United States at Buenos Ayres.

The undersigned avails himself of this occasion to offer General Alvear renewed assurance of his most distinguished consideration.

DANIEL WEBSTER.

The Case of the Brig Creole

Mr. Webster to Edward Everett.

DEPARTMENT OF STATE, January 29, 1842.

I REGRET to be obliged to acquaint you with a very serious occurrence, which recently took place in a port of one of the Bahama islands.

It appears that the brig Creole, of Richmond, Virginia, Ensor, master, bound to New Orleans, sailed from Hampton Roads on the 27th of October last, with a cargo of merchandise, principally tobacco, and slaves (about one hundred and thirty-five in number); that on the evening of the 7th of November, some of the slaves rose upon the crew of the vessel, murdered a passenger, named Hewell, who owned some of the negroes, wounded the captain dangerously, and the first mate and two of the crew severely; that the slaves soon obtained complete possession of the brig, which, under their direction, was taken into the port of Nassau, in the island of New Providence, where she arrived on the morning of the 9th of the same month; that at the request of the American consul in that place, the Governor ordered a guard on board, to prevent the escape of the mutineers, and with a view to an investigation of the circumstances of the case; that such investigation was accordingly made by two British magistrates, and that an examination also took place by the consul; that on the report of the magistrates, nineteen of the slaves were imprisoned by the local authorities as having been concerned in the mutiny and murder, and their surrender to the consul, to be sent to the United States for trial for these crimes, was refused, on the ground that the Governor wished first to communicate with the Government in England on the subject; that through the interference of the colonial authorities, and even before the military guard was removed,

the greater number of the remaining slaves were liberated, and encouraged to go beyond the power of the master of the vessel, or the American consul, by proceedings which neither of them could control. This is the substance of the case, as stated in two protests, one made at Nassau and one at New Orleans, and the consul's letters, together with sundry depositions taken by him, copies of all which papers are herewith transmitted.

The British Government cannot but see that this case, as presented in these papers, is one calling loudly for redress. The Creole was passing from one port of the United States to another, in a voyage perfectly lawful, with merchandise on board, and also with slaves, or persons bound to service, natives of America, and belonging to American citizens, and which are recognized as property by the Constitution of the United States in those States in which slavery exists. In the course of the voyage, some of the slaves rose upon the master and crew, subdued them, murdered one man, and caused the vessel to be carried into Nassau. The vessel was thus taken to a British port, not voluntarily, by those who had the lawful authority over her, but forcibly and violently, against the master's will, and with the consent of nobody but the mutineers and murderers; for there is no evidence that these outrages were committed with the concurrence of any of the slaves, except those actually engaged in them. Under these circumstances, it would seem to have been the plain and obvious duty of the authorities at Nassau, the port of a friendly Power, to assist the American consul in putting an end to the captivity of the master and crew, restoring to them the control of the vessel, and enabling them to resume their voyage, and to take the mutineers and murderers to their own country to answer for their crimes before the proper tribunal. One cannot conceive how any other course could justly be adopted, or how the duties imposed by that part of the code regulating the intercourse of friendly states, which is generally called the comity of nations, could otherwise be fulfilled. Here was no violation of British law attempted or intended on the part of the master of the Creole, nor any infringement of the principles of the law of nations. The vessel was lawfully engaged in passing from port to port in the United States. By violence and crime

she was carried, against the master's will, out of her course, and into the port of a friendly Power. All was the result of force. Certainly, ordinary comity and hospitality entitled him to such assistance from the authorities of the place as should enable him to resume and prosecute his voyage, and bring the offenders to justice. But, instead of this, if the facts be as represented in these papers, not only did the authorities give no aid for any such purpose, but they did actually interfere to set free the slaves, and to enable them to disperse themselves beyond the reach of the master of the vessel or their owners. A proceeding like this cannot but cause deep feeling in the United States. It has been my purpose to write you at length upon this subject, in order that you might lay before the Government of her Majesty fully and without reserve, the views entertained upon it by that of the United States, and the grounds on which those views are taken. But the early return of the packet precludes the opportunity of going thus into the case in this despatch; and as Lord Ashburton may shortly be expected here, it may be better to enter fully into it with him, if his powers shall be broad enough to embrace it. Some knowledge of the case will have reached England before his departure, and very probably his Government may have given him instructions. But I request, nevertheless, that you lose no time in calling Lord Aberdeen's attention to it in a general manner, and giving him a narrative of the transaction, such as may be framed from the papers now communicated, with a distinct declaration that if the facts turn out as stated, this Government thinks it a clear case for indemnification.

You will see that in his letter of the 7th January, 1837, to Mr. Stevenson, respecting the claim for compensation in the cases of the *Comet*, *Encomium*, and *Enterprise*, Lord Palmerston says that "his Majesty's Government is of opinion that the rule by which these claims should be decided, is, that those claimants must be considered entitled to compensation who were lawfully in possession of their slaves within the British territory, and who were disturbed in their legal possession of those slaves by functionaries of the British Government." This admission is broad enough to cover the case of the *Creole*, if its circumstances are correctly stated. But it does

not extend to what we consider the true doctrine, according to the laws and usages of nations ; and, therefore, cannot be acquiesced in as the exactly correct general rule. It appears to this Government that not only is no unfriendly interference by the local authorities to be allowed, but that aid and succor should be extended in these, as in other cases which may arise, affecting the rights and interests of citizens of friendly states.

We know no ground on which it is just to say that these colored people had come within, and were within, British territory, in such sense as that the laws of England affecting and regulating the conditions of persons could properly act upon them. As has been already said, they were not there voluntarily ; no human being belonging to the vessel was within British territory of his own accord, except the mutineers. There being no importation, nor intent of importation, what right had the British authorities to inquire into the cargo of the vessel, or the condition of persons on board ? These persons might be slaves for life ; they might be slaves for a term of years, under a system of apprenticeship ; they might be bound to service by their own voluntary act ; they might be in confinement for crimes committed ; they might be prisoners of war ; or they might be free. How could the British authorities look into and decide any of these questions ? Or, indeed, what duty or power, according to the principles of national intercourse, had they to inquire at all ? If, indeed, without unfriendly interference, and notwithstanding the fulfilment of all of their duties of comity and assistance, by these authorities, the master of the vessel could not retain the persons, or prevent their escape, then it would be a different question altogether, whether resort could be had to British tribunals, or the power of the Government in any of its branches, to compel their apprehension and restoration. No one complains that English law shall decide the condition of all persons actually incorporated with British population, unless there be treaty stipulation making other provision for special cases. But in case of the Creole the colored persons were still on board an American vessel, that vessel having been forcibly put out of the course of her voyage by mutiny ; the master desiring still to resume it, and calling upon the consul of his Government resident at the place and

upon the local authorities to enable him so to do, by freeing him from the imprisonment to which mutiny and murder had subjected him, and furnishing him with such necessary aid and assistance as are usual in ordinary cases of distress at sea. These persons, then, cannot be regarded as being mixed with the British people, or as having changed their character at all, either in regard to country or personal condition. It was no more than just to consider the vessel as still on her voyage, and entitled to the succor due to other cases of distress, whether arising from accident or outrage. And that no other view of the subject can be true is evident from the very awkward position in which the local authorities have placed their Government in respect to the mutineers still held in imprisonment. What is to be done with them? How are they to be punished? The English Government will probably not undertake their trial or punishment; and of what use would it be to send them to the United States, separated from their ship, and at a period so late as that, if they should be sent, before proceedings could be instituted against them the witnesses might be scattered over half the globe. One of the highest offences known to human law is thus likely to go altogether unpunished.

In the note of Lord Palmerston to Mr. Stevenson, above referred to, his lordship said that, "slavery being now abolished throughout the British empire, there can be no well-founded claim for compensation in respect of slaves who, under any circumstances, may come into the British colonies, any more than there would be with respect to slaves who might be brought into the United Kingdom." I have only to remark upon this, that the Government of the United States sees no ground for any distinction founded on an alteration of British law in the colonies. We do not consider that the question depends at all on the state of British law. It is not that in such cases the active agency of British law is invoked and refused; it is, that unfriendly interference is deprecated, and those good offices and friendly assistances expected which a Government usually affords to citizens of a friendly Power when instances occur of disaster and distress. All that the United States require in those cases, they would expect in the ports of England, as well as in those of her colonies. Surely, the influence of local law

cannot affect the relations of nations in any such matter as this. Suppose an American vessel, with slaves lawfully on board, were to be captured by a British cruiser, as belonging to some belligerent, while the United States were at peace; suppose such prize carried into England, and the neutrality of the vessel fully made out in the proceedings in Admiralty, and a restoration consequently decreed — in such case, must not the slaves be restored, exactly in the condition in which they were when the capture was made? Would any one contend that the fact of their having been carried into England by force set them free?

No alteration of her own local laws can either increase or diminish, or any way affect, the duty of the English Government and its colonial authorities in such cases, as such duty exists according to the law, the comity, and the usages of nations. The persons on board the *Creole* could only have been regarded as Americans passing from one part of the United States to another, within the reach of British authority only for the moment, and this only by force and violence. To seek to give either to persons or property thus brought within reach an English character, or to impart to either English privileges, or to subject either to English burdens or liabilities, cannot, in the opinion of the Government of the United States, be justified.

Suppose that by the law of England all blacks were slaves, and incapable of any other condition; if persons of that color, free in the United States, should, in attempting to pass from one port to another in their own country, be thrown by stress of weather within British jurisdiction, and there detained for an hour or a day, would it be reasonable that British authority should be made to act upon their condition, and to make them slaves! Or suppose that an article of merchandise, opium for instance, should be declared by the laws of the United States to be a nuisance, a poison — a thing in which no property could lawfully exist or be asserted; and suppose that an English ship with such a cargo on board, bound from one English port to another, should be driven by stress of weather, or by mutiny of the crew, into the ports of the United States, would it be held just and reasonable that such cargo should receive its

character from American law, and be thrown overboard and destroyed by the American authorities? It is in vain that any attempt is made to answer these suggestions by appealing to general principles of humanity. This is a point in regard to which nations must be permitted to act upon different views, if they entertain different views, under their actually existing condition, and yet hold commercial intercourse with one another, or not hold any such intercourse at all. It may be added, that all attempts by the Government of one nation to force the influence of its laws on that of another, for any object whatsoever, generally defeat their own purposes, by producing dissatisfaction, resentment, and exasperation. Better is it, far better in all respects, that each nation should be left without interference or annoyance, direct or indirect, to its undoubted right of exercising its own judgment in regard to all things belonging to its domestic interests and domestic duties.

There are two general considerations, of the highest practical importance, to which you will, in the proper manner, invite the attention of her Majesty's Government.

The first is, that, as civilization has made progress in the world, the intercourse of nations has become more and more independent of different forms of government and different systems of law or religion. It is not now, as it was in ancient times, that every foreigner is considered as therefore an enemy, and that, as soon as he comes into the country, he may be lawfully treated as a slave; nor is the modern intercourse of states carried on mainly, or at all, for the purpose of imposing, by one nation on another, new forms of civil government, new rules of property, or new modes of domestic regulation. The great communities of the world are regarded as wholly independent, each entitled to maintain its own system of law and government, while all, in their mutual intercourse, are understood to submit to the established rules and principles governing such intercourse. And the perfecting of this system of communication among nations requires the strictest application of the doctrine of non-intervention of any with the domestic concerns of others.

The other is, that the United States and England, now by far the two greatest commercial nations in the world, touch

each other both by sea and land at almost innumerable points, and with systems of general jurisprudence essentially alike, yet differing in the forms of their government and in their laws respecting personal servitude; and that so widely does this last-mentioned difference extend its influence, that without the exercise to the fullest extent of the doctrine of non-interference and mutual abstinence from anything affecting each other's domestic regulations, the peace of the two countries, and therefore the peace of the world, will be always in danger.

The Bahamas (British possessions) push themselves near to the shores of the United States, and thus lie almost directly in the track of that great part of their coasting traffic, which, doubling the cape of Florida, connects the cities of the Atlantic with the ports and harbors on the gulf of Mexico and the great commercial emporium on the Mississippi. The seas in which these British possessions are situated are seas of shallow water, full of reefs and sandbars, subject to violent action of the winds, and to the agitations caused by the gulf stream. They must always, therefore, be of dangerous navigation, and accidents must be expected frequently to occur, such as will cause American vessels to be wrecked on British islands, or compel them to seek shelter in British ports. It is quite essential that the manner in which such vessels, their crews, and cargoes, in whatever such cargoes consist, are to be treated, in these cases of misfortune and distress, should be clearly and fully known.

You are acquainted with the correspondence which took place a few years ago, between the American and English Governments, respecting the cases of the *Enterprise*, the *Comet*, and the *Encomium*. I call your attention to the Journal of the Senate of the United States, containing resolutions unanimously adopted by that body respecting those cases. These resolutions, I believe, have already been brought to the notice of her Majesty's Government, but it may be well that both the resolutions themselves and the debates upon them should be again adverted to. You will find the resolutions, of course, among the documents regularly transmitted to the legation, and the debates in the newspapers with which it has also been supplied from this Department.

You will avail yourself of an early opportunity of communi-

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cating to Lord Aberdeen, in the manner which you may deem most expedient, the substance of this despatch; and you will receive further instructions respecting the case of the Creole, unless it shall become the subject of discussion at Washington.

In all your communications with her Majesty's Government, you will seek to impress it with a full conviction of the dangerous importance to the peace of the two countries of occurrences of this kind, and the delicate nature of the questions to which they give rise.

I am, sir, your obedient servant,

DANIEL WEBSTER.

The United States and Mexico

Mr. Webster to the Mexican Commissioners.

DEPARTMENT OF STATE, Washington, January 21, 1842.

GENTLEMEN: I have the honor to acknowledge the receipt of your note of the 16th instant. It is believed that it can best be answered by transmitting the enclosed copy of a letter from this Department to the commissioners of the United States, dated the 23d December last, and of the extract from an instruction of Mr. Forsyth to Mr. Ellis, which accompanied it. You will perceive, from that letter, that it is not considered to be the province of the Executive of the United States to express an opinion upon the business which the convention has confided to the board of commissioners.¹ I will, however, add for your information, that, if all claims of citizens of the United States involved in the case of the schooner *Topaz*, or in any other cases embraced by the first article of the convention, shall be considered and disposed of by the board according to the terms of the convention, it is certain that this Government will not deem them a subject for any further negotiation with that of the Mexican republic. The mixed commission, under the convention with that republic, has always been considered by this Government essentially a judicial tribunal, with independent attributes and powers in regard to its peculiar functions. Its right and duty, therefore, like those of all other judicial bodies, are to determine upon the nature and extent of its own jurisdiction, as well as to consider and decide upon the merits of the claims which might be laid before it. The Government of the Mexican republic has seen fit to confer the rank

¹ Claims convention with Mexico, concluded April 11, 1839, as the basis for adjustment of claims of citizens of the United States against that country.

and title of plenipotentiary upon its commissioners, and its right to do so is admitted ; but it is conceived that this does not alter the nature of their functions. The authority and duty of all the commissioners are conferred and expressed by the convention. That authority and duty are declared to be impartially to examine and decide upon all claims of citizens of the United States upon the Mexican Government, statements of which had been presented, &c., and from the moment of the ratification of this convention, these claims ceased to be subjects of negotiation, and became subjects for adjudication. A tribunal was erected to examine and decide them upon such evidence as should be properly presented. It has always been the understanding of this Government, in this and similar cases, that such commissioners are judges, with the rights of ultimate decision, by the interference of the umpire, in the cases in which such interference became necessary, and in other cases without such interference. The very object contemplated by the convention was the establishment of an independent board — a high and responsible tribunal, which should hear and try these claims as impartial judges, independently of the instructions or wishes of either Government, and decide them according to the principles of general law and the evidence applicable to each case, respectively.

I have the honor to be, gentlemen, your obedient servant,

DANIEL WEBSTER.

MESSRS. PEDRO F. DEL CASTILLO and JOAQUIN VELAZQUEZ DE LEON,
Commissioners of the Mexican republic, under the convention of the 11th of April, 1839.

Mr. Webster to the Mexican Commissioners.

DEPARTMENT OF STATE, Washington, March 17, 1842.

GENTLEMEN: By the sixth section of the act of Congress of the 12th of June, 1840, entitled, "An act to carry into effect a convention between the United States and the Mexican republic," the commissioners are required at the close of their duties to deposit in this Department, the records, documents, and all other papers in the possession of the commission, or its officers, or

certified copies or duplicates thereof. From the accompanying copy of a letter from the Commissioners of the United States to this Department, it appears that you have failed to cooperate with them in carrying the provision of the law referred to into effect, and have taken exclusive possession of certain papers which have been used in the consideration of claims under the convention. As the right of this Government to the papers in question, or to copies thereof, is deemed, under the circumstances, to be indisputable, it would have been the duty of the President, in the absence of any law upon the subject, to see that the right referred to was secure, but as this right is specially recognized by the act of Congress which has been quoted, your attention is invited to the same, and you are requested to transmit to this Department any and all papers in your possession which may have been used for the purpose referred to, or authenticated copies thereof, or to permit copies to be made for the use of the Department, when the originals shall be restored to you.

I have the honor to be, gentlemen, your obedient servant,

DANIEL WEBSTER.

MESSRS. PEDRO F. DEL CASTILLO and JOAQUIN VELAZQUEZ DE LEON,
Commissioners of the Mexican republic, under the convention of the 11th of April, 1839.

Mr. Webster to the Mexican Commissioners.

DEPARTMENT OF STATE, Washington, March 19, 1842.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of the 25th ult., from Messrs. Castillo and V. de Leon, late commissioners of the Mexican republic under the convention of the 11th of April, 1839, announcing the termination of their labors and the consequent fulfilment of the obligations assumed by Mexico in ratifying the convention referred to, with the single exception of paying for the claims allowed in the way prescribed by that compact. The undersigned has not yet received the report of the commissioners of the United States, but he regrets to learn from other sources, that sundry

cases were not disposed of by the umpire. It would have been a cause of great satisfaction to the President if the commission had left no subject of claims of citizens of the United States against Mexico, not finally and satisfactorily adjusted.

The undersigned thinks that Messrs. Castillo and Velazquez de Leon must have fallen into an error in supposing any business intended for the consideration of the board of commissioners to have been withdrawn from them in consequence of any instructions from this Department to Mr. Ellis the minister of the United States at Mexico. It is true, that during the negotiation of the convention, the representative of Mexico desired that it should provide for the adjustment of all causes of complaint on the part of the United States against his Government. This application, however, was not acceded to, and the instrument was accordingly signed, stipulating in its first article the settlement of a special class of cases only, by means of the board of commissioners.

Those cases, therefore, which that compact did not provide for, were left open for the further negotiation, which was undertaken by Mr. Ellis pursuant to the instructions to which Messrs. Castillo and Velazquez de Leon allude, and that negotiation is considered by this Government to be still pending. Having made such remarks as appeared to them proper on the subject of the commission, and the proceedings under it, Messrs. Castillo and Velazquez de Leon are pleased to address to the undersigned, observations upon the causes which led to the convention, by virtue of which the late commission was formed, to speak of claims which the citizens of Mexico, or its Government are supposed to have on the Government of the United States, and to express the expectation of that Government in regard to those subjects. Messrs. Castillo and Velazquez de Leon will at once see that these are diplomatic subjects, which can only be discussed with agents of Mexico, having general powers of representing that Government at the seat of the Government of the United States, or having special powers to treat concerning them, or between the representative of the United States at Mexico, and the Government of that republic.

This Department is not in possession of any evidence that a proper power for this purpose has been conferred on Messrs.

Castillo and Velazquez de Leon. But the undersigned is willing to show the amicable disposition of his Government toward that of the Mexican republic, by receiving the communication of those gentlemen as an unofficial suggestion or overture, emanating from a like friendly spirit on the part of their Government; as there is no evidence in this Department of any claims such as those to which Messrs. Castillo and Velazquez de Leon allude, their existence cannot be admitted. But if the Mexican Government supposes such claims to exist perfect respect will be paid to the representations of its authorized agents concerning them, and the undersigned will add, that if, on the presentment of the report of the American commissioners, it shall appear that certain claims have not been finally decided by the umpire, and others, well founded in themselves, rejected as not being within the jurisdiction conferred on the commissioners, all such claims must, of course, be again presented to the Mexican Government.

The undersigned has also had the honor to receive the note of Messrs. Castillo and Velazquez de Leon of the 26th ultimo. In regard to this, it is only proper for this Department to acknowledge the receipt of the paper, and to say, that no judgment on the manner in which the duties of the commissioners have been fulfilled can be formed, until the report of the commissioners on the part of the United States shall have been received.

But it would be wanting in candor for the undersigned not to apprise Messrs. Castillo and Velazquez de Leon, that many earnest remonstrances and complaints have been lodged in this Department against certain proceedings of the commissioners on the part of Mexico, and complaints also against the Government of Mexico for neglecting its duty under the convention in regard to the furnishing of the documentary proof requisite for the support of claims. In relation, however, to the justice of these complaints and remonstrances, this Department does not now desire to express or intimate any opinion.

The undersigned avails himself of this occasion to offer Messrs. Castillo and Velazquez de Leon renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

Mr. Webster to Mr. Thompson.

DEPARTMENT OF STATE, Washington, 22d June, 1842.

SIR: The Government of the United States sees with pain a prospect of the immediate resumption of active military operations between Texas and the Mexican Republic. While it claims no right to interfere in the pending controversy between those countries, it cannot, under existing circumstances, be indifferent to a renewal of hostilities between them. Nearly seven years have now elapsed since Texas has maintained its independence, unmolested by invading troops. In that time she has contracted treaties with other powers in both hemispheres, and has been making progress in the arts of peace. Events have detached her from Mexico, and existing circumstances cannot fail to indicate to all intelligent observers that her ultimate reannexation is among the things most to be doubted. It is notorious that the language, the laws, and the habits of the people of the two countries are dissimilar, that in these and in other respects differences exist so wide as not to promise happiness to a union between the population of the two States. Texas was heretofore the remotest northeastern province of Mexico, its distance from the Mexican capital is very great, and the character and population of the intervening country are such that Mexico could hardly hope to exercise over Texas an efficient authority. Without Texas, Mexico would still be not only one of the largest sovereignties of the world, but would possess a territory which, for its position and other great natural advantages, would be difficult to be surpassed. Her jurisdiction would still extend over a vast space, embracing, even in the same latitude, in consequence of the different degrees of elevation belonging to its different parts, almost every climate and every production of the habited globe, while with ports on both oceans, she offers facilities of commerce to the whole world. On the other hand, Texas is sufficiently large for a respectable community. Her limits are defined and peace, with an opportunity of improving her resources, is much more important to her than any chances of territorial acquisition. The Government of the United States

feels a strong interest in the welfare of both countries. Both are our neighbors, they are among the newly organized governments, the regenerated systems of this hemisphere. For their own prosperity, as well as for the convenience and advantage of neighboring States, they require repose, security, and vigorous application to the arts of peace. Under these circumstances the President directs that if you should receive from the Mexican Government any intimation of its desire for the interposition or mediation of this government for the purpose of bringing about peace between Texas and Mexico, you will state that such interposition or mediation will be cheerfully granted. So long, however, as either of those parties shall be resolved to remain at war with the other, and unless both of them shall request the mediation of the United States, the President would not be inclined to interfere. The opinion of this government upon the subject was expressed in a letter from Mr. Forsyth to Mr. Dunlap, late representative of Texas here, and in the letter of General Jackson to General Santa Anna, therein referred to, a copy of both of which is now transmitted.

Although policy and duty dictate this reserve on our part, it is not to be disguised that the immediate and permanent interests of the United States call loudly for the cessation of hostilities between Texas and Mexico. So long as the war continues, our extensive commerce and navigation in the Gulf of Mexico are liable to vexations and interruptions from one or the other belligerent, our citizens who may desire to trade with or to travel to Mexico across the Texan frontier may be driven back or be seized and their property confiscated, if for no other cause, from the difficulty if not impossibility for the Mexican local authorities to distinguish between them and Texans.

It is proper to advert to another consideration, which has no small weight in the President's mind. It is the danger, should the war between Mexico and Texas be renewed and prosecuted by the use of considerable military forces, that citizens of the United States would be inclined to take part, either on the one side or the other, to such an extent as might possibly compromise the neutrality and peace of this country, or at least create jealousy and dissatisfaction. Nothing is more probable than that the renewal of the war between Mexico and Texas, and the

known fact of the invasion of the latter country by the former, with a large force, would be an occasion for crowds of persons to enter Texas and take their share in the chances of the war. This is a topic upon which you cannot, perhaps, very well speak fully and at length, to the Mexican Government, but a remote and delicate intimation of the probability of such occurrences might be made and ought to produce in the counsels of that government great caution and deliberation. The more general ground, which I have already stated, may be exhibited without reserve; that is, the President's clear and strong conviction that the war is not only useless, but hopeless, without attainable object, injurious to both parties and likely to be, in its continuance, annoying and vexatious to other commercial nations. The President consequently relies upon your address to bring about the object desired, which he hopes may be accomplished within the limits which have been assigned.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

TO WADDY THOMPSON, ESQUIRE,

Envoy Extraordinary and Minister Plenipotentiary of the United States, Mexico.

Mr. Webster to Mr. Thompson.

DEPARTMENT OF STATE, Washington, 30th December, 1842.

SIR: Since the instruction to you of the 15th instant, No. 22, it has been decided by the President that a Convention should be entered into confined to the simple object of paying the awards. A draught of one is accordingly now transmitted based mainly upon the overture contained in the note of Mr. de Bocanegra to you of the 5th ultimo.

In the first article the payment of the interest has been required within three months from the signature instead of three months from the date of the Convention. This has been done in order that the sense might be clear and undoubted. If (as is understood, and presumed to be the case) President Santa Anna can, under the existing state of things in that country, ratify the Convention without requiring for it the previous sanction of the Mexican Congress, yet our experience gives us cause to apprehend that there may be delay in affecting an

exchange of the ratifications at least to the full term to be allowed for that purpose. This would unreasonably retard the first payment of the interest if it should not take place until three months from that time. We wish to make it certain that the interest due shall be paid, without fail, in three months from the time you put your signature to the treaty.

The second article requires that the five years within which the payments of the principal and interest are to be completed, shall also begin at the expiration of three months from the signature by the plenipotentiaries.

By the third article it is stipulated that the Mexican Government shall provide an escort sufficient to protect the money in its transit from the Capital to the coast. This provision is considered to be essential, as the necessity for the protection is notorious, and although the reason assigned for making the payments at Mexico and not at Vera Cruz may be a good one, it is not sufficient to exempt that government from the obligation, as it alone has the right, to insure in the way proposed, a safe passage for the treasure to the coast.

No article has been admitted founded upon Mr. de Bocanegra's fourth proposition, because it is conceived that such an article would imply at least an apprehension on the part of this Government that the payments would not be punctually made. It is deemed best that the Mexican Government should not have any cause to suppose that such an apprehension is entertained. Indeed, the fixed feeling of this Government is that while allowing to Mexico such a time as she herself has requested for the payment of these awards, nothing must be allowed to interrupt that payment in the manner stipulated.

In the fourth article the pledge of the Mexican direct taxes is accepted, but a proviso is added that by this acceptance the Government of the United States incurs no obligation to look to that source alone or to rely upon it for payment. The necessity for this proviso, considering the frequent changes in the persons administering the Mexican Government and in its policy, will, I presume, be obvious to you.

The ratifications are to be exchanged within ten months from the signature. If the Convention should not be received here in season to be considered by the Senate of the United States at

its present session, the term mentioned will suffice to enable that body to dispose of it at its next session. At all events it is thought to be indispensable that the compact should be ratified by the Mexican Government before it is sent to the United States for that purpose.

It cannot be anticipated that the Mexican Government will seriously object to these modifications of the terms which it offered through Mr. de Bocanegra, especially as the only very important one is favorable to Mexico. The President, however, confidently relies upon your skill to answer any objections which may be made, and hopes that through your means this difficult and delicate business may at length be adjusted to the satisfaction of all parties.

It is not thought expedient to give you any instructions at present in regard to the claims which were not disposed of by the Commission under the Convention of the 11th of April, 1839. That subject may properly be matter for a separate Convention. It is under consideration, and you will hear from this Department respecting it, at an early day.

I pray you that the bearer of this may not be detained, but, if possible, as already said, it is highly desirable he should return before the adjournment of Congress.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

TO WADDY THOMPSON, ESQUIRE,

*Envoy Extraordinary and Minister Plenipotentiary of the United States,
Mexico.*

The Northeastern Boundary

*Mr. Webster to Lord Ashburton.*¹

DEPARTMENT OF STATE, Washington, July 8, 1842.

MY LORD: Your notes of the 13th and 21st of June were duly received.

In the first of these you correctly say that, in our conferences on the boundary question, we have both been of opinion that no advantage would be gained by resorting at this time to the discussion at length of the grounds on which each party considers its claim of right to rest. At the same time, you deem it expedient, nevertheless, to offer some observations calculated, in your judgment, to repel a supposed allegation, or suggestion, that this controversy only began in 1814; that, up to that period, the American claim was undisputed; and that the English claim, as now set forth, is founded merely in motives of interest. Nothing is more natural than that your Lordship should desire to repel an imputation which would impeach the sincerity and good faith of your Government, and all the weight which justice and candor require is given to your Lordship's observations in this respect. It is not my purpose, nor do I conceive it pertinent to the occasion, to go into any consideration of the facts and reasonings presented by you, to show the good faith and sincerity of England in the claim asserted by her. Any such discussion would be a departure from the question of right now subsisting between the two Governments, and would be more especially unfit for an occasion in which the parties are approaching each other in a friendly spirit, with the hope of terminating the controversy

¹ This letter, reprinted from "The Congressional Globe," was omitted from the Correspondence with Lord Ashburton in Webster's Collected Works.

by agreement. Following your Lordship's example, however, I must be permitted to say that few questions have ever arisen under this Government in regard to which a stronger or more general conviction was felt that the country was in the right, than this question of the Northeastern boundary. To say nothing of the sentiments of the Governments and people of the States more directly interested, whose opinions may be supposed capable of bias, both Houses of Congress, after full and repeated consideration, have affirmed the validity of the American claim, by a unanimity experienced on very few other subjects ; and the general judgment of the whole people seems to be the same way. Abstaining from all historical facts, all contemporaneous expositions, and all external arguments and circumstances, I will venture to present to your Lordship a very condensed view of the reasons which produce in this country the conviction that a boundary line may be ascertained, run, and delineated with precision, under and according to the words of the stipulation in the treaty of 1783 ; that no doubt can be raised by any part of that stipulation, which other parts of it do not remove or explain ; and that a line so run would include all that the United States claim. This view is presented by a series of short propositions.

1. The northwest angle of Nova Scotia is the thing to be sought for and found.

2. That angle is to be ascertained by running a line due north from the source of the St. Croix river till that line reaches the highlands ; and where such north line intersects the highlands, there is the angle ; and thence the line is to run along the *said* highlands ; which *said* highlands divide those rivers which empty themselves into the river St. Lawrence from those that fall into the Atlantic ocean. The angle required, therefore, is an angle made by the intersection of a due north line with highlands, from one slope of which the rivers empty themselves into the river St. Lawrence, and from the other into the Atlantic ocean.

3. Supposing it to be matter of doubt whether the St. John and the Ristigouch are rivers falling into the Atlantic ocean, in the sense of the treaty, then the rule of just interpretation is, that if one element or one part in the description be uncertain,

it is to be explained by others which are certain, if there be such others. Now, there is no doubt as to the rivers which fall into the St. Lawrence. They are certain; and to their sources the north line is to run, since at their sources the highlands required by the treaty do certainly exist. And departing, for a moment, from the rule just prescribed to myself, I will remind your Lordship that the joint commissioners and agents of the two Governments in 1817, in giving the surveyors instructions for finding these highlands, directed them, in terms, to proceed upon a due north line "till they should arrive at some one of the streams connected with the river St. Lawrence;" and then to explore the highlands from that point to the northwesternmost head of Connecticut river. It is indisputable that a line run according to these instructions, thus given by the commissioners and agents of both Governments, would give to the United States all that they have at any time claimed.

4. It is certain that, by the treaty, the eastern boundary of the United States, from the head of the St. Croix, is to be a due north and south line. And it is equally certain that this line is to run north till it reaches highlands, from whose northern watershed the rivers flow into the river St. Lawrence.

5. These two things being—one mathematically, and the other physically—certain in themselves, and capable of being precisely marked and delineated, explain or control the uncertainty, if there be uncertainty, in the other part or element of the description.

6. The British argument, assuming that the Bay of Fundy, and more especially the Bay of Chaleurs, are not the Atlantic ocean, within the meaning of the treaty, insists that the rivers flowing into these bays are not, therefore, in the sense of the treaty, rivers falling into the Atlantic; and therefore the highlands to which the United States claim have not that southern or eastern watershed which the treaty calls for; and as it is agreed, nevertheless, that we must somewhere find highlands, and go to them, whose northern waters run into the St. Lawrence, the conclusion is, that the different parts of the description in the treaty do not cohere, and that, therefore, the treaty cannot be executed.

7. Our answer to this, as is obvious from what has already been said, is twofold.

First. What may be doubtful in itself, may be made certain by other things which are certain ; and inasmuch as the treaty does certainly demand a due north line, and does certainly demand the extension of that line to highlands from whose northern sides the rivers flow into the river St. Lawrence, thence two clear requirements make it plain that the parties to the treaty considered, in fact, the rivers flowing from the south or east of the *said* highlands to be rivers falling into the Atlantic ocean ; because they have placed the St. Lawrence rivers and the Atlantic rivers in contradistinction to each other, as rivers running in opposite directions, but with their sources in the same highlands. Rivers fed from these highland fountains, running north or northwest, are rivers emptying themselves into the St. Lawrence ; and rivers arising from the same fountains, and running in an opposite direction, seem to be as clearly meant to be designated by the character of Atlantic rivers. And, as strongly corroborating this view of the subject, allow me to call your Lordship's attention to two facts.

1. The coast of the Atlantic ocean, from Penobscot river northeasterly, and the western shore of the Bay of Fundy (which is but a continuation of the coast, and is in a line with it), is very nearly parallel to the course of the river St. Lawrence through the same latitudes. This is obvious from the map.

2. The rivers which, from their sources in the same ridge, flow respectively into the St. Lawrence and into the Bay of Fundy, and even into the Bay of Chaleurs, run with remarkable uniformity in directions almost exactly opposite, as if hastening away from a common origin to their different destinations by the shortest course. The only considerable exception to this, is the northern sweep of the upper part of the St. John ; but the smaller streams flowing into this part of that river from the west still strictly obey the general rule.

Now if, from a certain general line on the face of the country, or as delineated on the map, rivers are found flowing away in opposite directions, however strongly it may be asserted that the mountains or eminences are but isolated elevations, it is

nevertheless absolutely certain that such a line does in fact define a ridge of highlands which turns the waters both ways.

And, as the commissioners in 1783 had the map before them ; as they saw the parallelism of the seacoast and the course of the St. Lawrence ; as they saw rivers rising from a common line, and running some north or northwest, the others south or southeast ; and as they speak of some of these rivers as emptying themselves into the river St. Lawrence, and of others falling into the Atlantic ocean ; and *as they make no third class*, — is there a reasonable doubt in which class they intend to comprehend all the rivers running in a direction from the St. Lawrence, whether falling immediately, or only ultimately, into the Atlantic ocean ?

If there be nothing incoherent or inconsequential in this chain of remarks, it will satisfy your Lordship, I trust, that it is not without reason that American opinion has settled firmly in the conviction of the rights of the American side of the question ; and I forbear from going into the consideration of the mass of other arguments and proofs, for the same reasons which restrain your Lordship from entering into an extended discussion of the question, as well as because your Lordship will have an opportunity of perusing a paper addressed to me by the commissioners of Maine, which strongly presents the subject on other grounds and in other lights.

I am now to consider your Lordship's note of the 21st June. Before entering upon this, I have the President's instructions to say that he fully appreciates the motives which induced your Lordship, personally, to undertake your present mission ; that he is quite aware that your public life has been distinguished by efforts to maintain peace and harmony between the two countries ; that he quite well recollects that your exertions were employed to prevent the late war, and that he doubts not the sincerity of your declaration that nothing could have drawn you from your retirement, and induced you to engage in your present undertaking, but the hope of being of service to your country, and to our common race. And I have the utmost pleasure, my Lord, in acknowledging the frankness, candor, and plain dealing, which have characterized your official intercourse with this Government ; nor am I permitted or inclined

to entertain any doubt of your Lordship's entire conviction, as expressed by yourself, as to the merits of this controversy and the difficulties of the case. The question before us is, whether these confident opinions, on both sides, of the rightful nature and just strength of our respective claims, will permit us, while a desire to preserve harmony, and a disposition to yield liberally to mutual convenience, so strongly incite us, to come together and to unite on a line by agreement.

It appears to be your Lordship's opinion that the line of the St. John, from the point where the north line from the St. Croix strikes that river, up to some one of its sources, evidently suits both parties — with an exception, however, of that part of the Madawaska settlement which is on the south side of the St. John, which you propose should be included within the British territory. That, as a line by agreement, the St. John for some distance upwards from its intersection by the line running north from the St. Croix, would be a very convenient boundary for the two parties, is readily admitted; but it is a very important question how far up, and to which of the sources of this river, this line should extend. Above Madawaska the course of the river turns to the south, and, stretching away towards the sources of the Penobscot, leaves far to the north the line of communication between New Brunswick and Canada. That line departs from the St. John altogether near Madawaska, and, keeping principally upon the left or north bank of the Madawaska, and proceeding by way of the Temiscouata lakes, reaches the St. Lawrence at the mouth of the river du Loup.

There are, then, two important subjects for consideration.

First. Whether the United States can agree to cede, relinquish, or cease to claim, any part of the territory west of the north line from the St. Croix and south of the St. John. And I think it but candid to say, at once, that we see insurmountable objections to admitting the line to come south of the river. Your Lordship's observations upon the propriety of preserving the unity of the Madawaska settlement are, in a great measure, just, and altogether founded, I doubt not, in entirely good motives. They savor of humanity and a kind regard to the interests and feelings of individuals. But the difficulties seem

insuperable. The river, as your Lordship remarks, seems a natural boundary, and, in this part of it, to run in a convenient direction. It is a line always clear and indisputable. If we depart from it, where shall we find another boundary equally natural, equally clear, and conforming to the same general course? A departure from the line of the river, moreover, would open new questions about equivalents, which it would probably be found impracticable to settle. If your Lordship were at liberty (as I understand you not to be) to cede the whole or a part of the territory, commonly called the strip, lying east of the north line, and west of the St. John, considerations might be found in such a cession, possibly for some new demarcation west of the north line and south of the river; but, in the present posture of things, I cannot hold out the expectation to your Lordship that anything south of the river can be yielded.

And, perhaps, the inconveniences to the settlers on the southern bank, of making the river the boundary, are less considerable than your Lordship supposes. These settlers are scattered along a considerable extent, very likely soon to connect themselves with whomsoever may come to live near them; and though of different origin, and some difference of religion, not likely, on the whole, to be greatly dissimilar from other borderers occupying the neighboring territory, their rights of property would, of course, be all preserved, both of inheritance and alienation; and if some of them should choose to retain the social and political relations under which they now are, their removal, for that purpose, to the north bank, drawing after it no loss of property, or of means of subsistence, would not be a great hardship. Your Lordship suggests the inconvenience of dividing a municipality by a line of national boundary; and certainly there is force in the observation; but if, departing from the river, we were to establish, to the south of it, an artificial line upon the land, there might be points on such line at which people would live in numbers on both sides; and a more mathematical line might thus divide villages, while it divided nations. The experience of the world, and our own experience, show the propriety of making rivers boundaries whenever their courses suit the general object; for the same reason that, in other cases to which they are applicable, mountain ranges, or

ridges of highlands, are adopted for the same purpose; these last being, perhaps, still more convenient lines of division than rivers, being equally clear and prominent objects, and the population of neighboring countries bordering on a mountain line of separation being usually thin and inconsiderable on either side. Rivers and inland waters constitute the boundary between the United States and the territories of her Majesty for some thousands of miles westward from the place where the 45th degree of north latitude intersects the St. Lawrence; and along this line, though occasional irregularities and out-breaks have taken place (always by the agency and instigation of agitators and lawless men, friends of neither country), yet it is clear that no better demarcation of limits could be made. And at the northeast, along the space through which the St. Croix constitutes the line of separation, controversies and conflicts are not heard of; but similarity of language, character, and pursuits, and mutual respect for the rights of each other, preserve the general peace.

Upon the whole, my Lord, feeling that there may be inconvenience, and perhaps a small degree of hardship, I yet cannot admit that there is any cruelty in separating the Madawaska settlers south of the St. John, so far as political relations are concerned, from their neighbors on the north of that river. In the present state of society and of peace which exists between the two countries, the severance of political relations needs not to disturb social and family intercourse; while high considerations, affecting both the present and the future, seem to me to require that, following natural indications, we adhere to the St. John, in this part of its course, as the line of division.

The next question is, how far upward this boundary ought to be observed, and along which of its branches. This question would be easily settled, if what may be called the main branch of the river, in this part of it, differing from the general character of rivers in this region of country, did not make a sudden turn. But if we consider the main branch of the St. John — that which has been recently usually so denominated — your Lordship observes that, near the mouth of the Madawaska, it turns almost at right angles, and pushes its sources toward those of the Penobscot. Contiguity and compactness of territory can

hardly be preserved by following a stream which makes not occasional windings, but at once so great a deflection from its previous course. The Madawaska is one of its branches, or principal sources, and, as the map shows, is very much a continuance of the line of the principal river from the Great Falls upward. The natural course would, therefore, seem to be to continue along this branch.

We understand, and, indeed, collect from your Lordship's note, that, with whatever opinion of her right to the disputed territory, England, in asserting it, has principally in view to maintain, on her own soil, her accustomed line of communication between Canada and New Brunswick. We acknowledge the general justice and propriety of this object; and agree at once that, with suitable equivalents, a conventional line ought to be such as to secure it to England. The question, therefore, simply is, what line will secure it?

The common communication between the provinces follows the course of the St. John from the Great Falls to the mouth of the Madawaska, and then, not turning away to the south with the course of the main stream, identifies itself with that of the Madawaska, going along with it to the Temiscouata lakes, thence along those lakes, and so across the highlands, to streams running into the St. Lawrence. And this line of communication we are willing to agree shall hereafter be within acknowledged British territory, upon such conditions and considerations as may be assented to. The Madawaska and the forementioned lakes might conveniently constitute the boundary. But I believe it is true that, in some part of the distance, above the mouth of the Madawaska, it has been found convenient to establish the course of communication on the south bank of that river. This consideration may be important enough to justify a departure from what would otherwise be desirable, and the running of the line at some distance south of the Madawaska, observing natural monuments where it may be practicable, and thus leaving the whole valley of the Madawaska on the British side.

The United States, therefore, upon the adjustment of proper equivalents, would not object to a line of boundary which should begin at the middle of the main channel of the river St. John,

where that river is intersected by a due north line extended from the source of the St. Croix ; thence proceeding westerly, by the middle of the main channel of that river, to a point three miles westerly of the mouth of the Madawaska ; thence by a straight line to the outlet of Long Lake ; thence westerly by a direct line, to the point where the river St. Francis empties itself into the lake called Pohenagomook ; thence continuing in the same direct line to the highlands which divide the waters falling into the river du Loup from those which fall into the river St. Francis. Having thus arrived at the highlands, I shall be ready to confer on the correct manner of following them to the northwesternmost head of the Connecticut river.

Such a line as has been now described would secure to England a free intercourse between Canada and New Brunswick ; and, with the navigation of the St. John yielded to the United States, would appear to meet the wants of all parties. Your Lordship's proposition in regard to the navigation is received as just, and as constituting, so far as it may go, a natural equivalent. Probably the use of the river for the transportation of the products of the forest, grown on the American side of the line, would be equally advantageous to both parties ; and, therefore, in granting it, no sacrifice of British interest would be incurred. A conviction of this, together with their confidence in the validity of their own claim, is very likely to lead the two States immediately concerned to consider their relinquishment of the lands north of the line much in the light of a mere cession. It need not be denied that, to secure this privilege, and to have a right to enjoy it, free from tax, toll, or other liability or inability, is an object of considerable importance to the people of Maine.

Your Lordship intimates that, as a part of the general arrangement of boundaries, England would be willing to surrender to the United States Rouse's Point, and all the territory heretofore supposed to be within the boundaries of New Hampshire, Vermont, and New York, but which a correct ascertainment of the forty-fifth parallel of north latitude shows to be included within the British line. This concession is, no doubt, of some value. If made, its benefits would enure partly to these three States, and partly to the United States, and none

of it to the particular interests of Maine and Massachusetts. If regarded, therefore, as a part of the equivalent for the manner of adjusting the northeastern boundary, these two last-mentioned States would, perhaps, expect that the value, if it could be ascertained, should be paid to them. On this point further consideration may be necessary.

If, in other respects, we should be able to agree on a boundary, the points which you refer to, connected with the ascertainment of the head of the Connecticut, will be attended to ; and Captain Talcott, who made the exploration in that quarter, will be ready to communicate the result of his observations.

I have the honor to be, with distinguished consideration,
your obedient servant,

DANL. WEBSTER.

LORD ASHBURTON, &c., &c., &c.

The Amistad Case

Mr. Webster to Chevalier d'Argaiz.

DEPARTMENT OF STATE, Washington, 29 August, 1842.

The undersigned Secretary of State, anxious to give all reasonable satisfaction to the Chevalier d'Argaiz, promised him, it is true, to go into the subject again, although he had already addressed him two full notes upon it; and the undersigned believes it is true also that he signified to the Chevalier d'Argaiz his belief that he could transmit him this third note by the 15th of August. And in fact it did happen that on that day he was engaged upon the preparation of such a note at the moment when he received the wholly unexpected communication from the Intendente of Havana, of which the Chevalier d'Argaiz has now a copy. The receipt of that communication might well cause the undersigned to pause. He immediately received the President's instructions to make an inquiry of the Chevalier d'Argaiz which the Chevalier d'Argaiz declined to answer. This made it necessary to answer the letter of the Intendente; and the Chevalier d'Argaiz has been made acquainted with that answer; and a despatch upon the subject has been sent also from this Department to the representative of this Government at the Court of Madrid.

An answer is hoped for from Havana in a few weeks, and from Spain in all due time. But, in the mean time, the undersigned will well consider whether his duty will allow him, under the very unexpected and extraordinary occurrences which have arisen, to discuss further the case of the Amistad, until a reply be received to his communication from the Intendente at Havana, or from the American Minister at Madrid. The Chevalier d'Argaiz may be quite assured that this Government can never consent to connect the unacknowledged claim, in the case of the Amistad, with the acknowledged debt due by

Spain to the United States, settled and liquidated as it is, and its payment secured by formal and solemn treaty stipulations.

The undersigned avails himself of this occasion to renew to the Chevalier d'Argaiz the assurance of his distinguished consideration.

DAN'L WEBSTER.

CHEVALIER D'ARGAIZ, &C., &C., &C., *Bordentown.*

Mr. Webster to Mr. Irving.

DEPARTMENT OF STATE, Washington, 14th March, 1843.

SIR: I have the honor to inform you that, on the 22d ultimo, the President communicated to Congress the latest correspondence between this Department and the Spanish Minister respecting the "Amistad" case. A copy of the document containing it is herewith transmitted.

A reply to the confidential letter from this Department, of 11th January, to the Consul at Havana (copy of which was sent to you in my despatch No. 11), has been received. From the reply it would seem that, as far as the Consul knew, or could obtain intelligence upon the subject, from the authorities of the Island, and from other sources, the information which had been received here is, as was supposed, greatly exaggerated. Enough, however, of danger and alarm still exists in that quarter to render caution and vigilance, on the part of this Government, indispensably necessary.

I transmit the commissions of Franklin Gage, of Maine, and John Hartman, of Philadelphia, the former appointed Consul for the port of Cardenas, and the other for the port of Baracoa, in Cuba, on the receipt of which you will apply to the Spanish Government for exequators, and forward them, when obtained, with the commissions, to their respective consulates. They have been directed to supply you with the means of defraying the expenses that may be incurred.

I am, Sir, respectfully,

Your obedient servant,

DANIEL WEBSTER.

WASHINGTON IRVING, ESQR., &C., &C., &C., *Madrid.*

The Treaty of Washington.

Mr. Webster to Mr. Everett.

DEPARTMENT OF STATE, Washington, 22d August, 1842.

SIR: The Senate of the United States having given its constitutional advice and consent to the treaty with Great Britain recently negotiated here, the President has ratified it on the part of the Government of the United States, and I now transmit to you by Mr. Derrick, who will deliver you this letter, the American ratification, to be exchanged against that of Her Britannic Majesty. You will accordingly, upon the receipt of this despatch, inform the British Secretary of State for Foreign Affairs that the treaty has been ratified on our part, and that you are authorized to exchange the ratifications with such person as may be duly empowered for that purpose on the part of the British Government.

No difficulty or delay in the ratification of the treaty by Great Britain is anticipated. As soon as the exchange of the ratifications takes place, it is desirable that you should forward, without unnecessary delay, the British ratification to the United States. Mr. Derrick will bring it hither; and for that purpose he is directed, after waiting a short time to recover from the fatigues of the voyage, to take charge of it home. If, contrary to my expectations, the ratification should be long delayed, Mr. Derrick need not wait for it, but will return without it, in which case you will afterwards forward it by the usual channel of conveyance.

I am, Sir, your obedient servant,

DAN'L WEBSTER.

EDWARD EVERETT, ESQR., &C., &C., &C.

The Most Favored Nation Clause

Mr. Webster to Pierre Soulé.

DEPARTMENT OF STATE, Washington, 11th September, 1850.

HON. PIERRE SOULÉ, U. S. SENATE.

MY DEAR SIR: I must pray leave to offer the state of my health as an apology for delaying for so long a time an answer to your letter of the 5th of this month, written by the direction of the Committee on Commerce. The question which in behalf of the committee you propound is one which I have had occasion heretofore to consider.

I believe the bill of which you send me a copy interferes with no treaty stipulations into which the United States have entered with foreign nations. The reciprocity treaties subsisting between the United States and foreign countries, by which the United States agree to place the commerce of those countries on a footing of that of the most favored nation, cannot be construed to prohibit the Government of the United States from entering into an agreement, with mutual and equivalent consideration on both sides, with any neighboring colony or nation for the free navigation of a river which divides the parties, and for reciprocal trade between them, upon the same mutuality of consideration. I think this is very clear; and, if deemed necessary, will give my reasons to the Committee, more at length, whenever the state of my eyes shall enable me to read and to write. In the mean time I send you the copy of a communication from the late Secretary of the Treasury, Mr. Walker, under date of the 1st of May, 1848, to the Hon. Mr. Grinnell, of the Committee on Commerce of the House of Representatives, in which you will see that Mr. Walker concurs in the opinion which I have expressed. This paper, indeed, is signed by Mr. McClintock Young, as Acting Secretary of the Treasury, but I have occasion to know that it was dictated by Mr. Walker himself.

I have the honor to be, &c.,

DANIEL WEBSTER.

The Imprisonment of James H. West

Mr. Webster to Mr. Barringer.

DEPARTMENT OF STATE, Washington, July 28, 1850.

SIR: I have the honor to transmit to you herewith a copy of a second affidavit and protest made by Mr. James H. West, of Bristol, Rhode Island, before the United States Consul for Sagua la Grande, Cuba. This protest is accompanied with a certificate from Messrs. Reed & Wainwright, merchants, Boston.

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You will without delay place copies of these papers in possession of the Minister of Foreign Affairs, and insist upon an order for the immediate release of Mr. West and of his employés, Blethen and Lambden, as well as for speedy and ample indemnification to him for the outrage, and for the pecuniary losses which he has suffered in consequence of his imprisonment, and of the withholding from him of his commercial books and correspondence.

Upon the application of the parties aggrieved, my predecessor addressed instructions to you on the 1st of April last, to which we have your despatches in reply, Nos. 16 and 17, of the 2d and 11th of the following month, containing your correspondence with the Minister of Foreign Relations of Spain upon the subject of this outrage upon three American citizens. This correspondence, upon your part, is entirely approved by me; nor do I perceive that you have justly laid yourself open to the animadversions contained in the correspondence on his part.

You will please to assure his excellency, the Minister of Foreign Affairs of Spain, that although this Government does not incline to magnify small matters into things of great importance, yet it regards any act *depriving an American citizen*

of his personal liberty as a subject of very just complaint until a proper charge for such deprivation be *established on full and sufficient evidence*.

And I desire his excellency, the Minister of Foreign Affairs, to understand distinctly that no Spanish subject will be deprived of his liberty by order of this Government, or any branch of it, on mere suspicion, or on any slight grounds or unfounded imputations; and that in this respect we confidently anticipate *concurrent and reciprocal* sentiments and conduct from the Spanish Government.

You are instructed, however, to lose no time, after the receipt of this despatch, in addressing a note to the Spanish Minister, apprizing him of the views of your Government, and requesting of him *a true copy of the proceedings* in this case before the legal tribunals of Sagua la Grande. If it appears that Mr. West was acquitted, after trial, of all complicity in the smuggling of the gunpowder, and of political designs, all which will be shown by this record, it will then follow, as a matter of course, that *the arrest was without cause*, and its further continuance wholly unjustifiable.

You will receive herewith a copy of the rules and regulations of the port of Havana, and also a statement of facts furnished to this Department by the Rev. John West, the father of the accused.

I am, sir, respectfully, your obedient servant,

DANIEL WEBSTER.

DANIEL M. BARRINGER, Esq., &c., &c., &c., *Madrid*.

Claim against Great Britain

*Mr. Webster to Abbott Lawrence.*¹

DEPARTMENT OF STATE, Washington, 13th Jan., 1851.

ABBOTT LAWRENCE, ESQ., &C., &C., &C.

SIR: I transmit a copy of a letter, under date the 29th of August last, addressed to this Department by Messrs. Amos Tuck and John L. Hayes, and of other documents, relative to the schooner *John*, captured on the 5th day of March, 1815, by His Britannic Majesty's ship *Talbot*, Lieutenant Maudesly, commander, in latitude $31^{\circ} 40'$, and longitude $78^{\circ} 10'$. According to the second article of the treaty of Ghent, the British Government was bound to make restitution of the vessel; but as she was lost before she could be taken into port, in consequence, as is alleged, of the negligence or unskillfulness of the prize master, the owners brought suit in the Admiralty Court at London against Lieutenant Maudesly, personally, which decided that he was not liable to make amends for the capture. The argument of Messrs. Tuck and Hayes, however, is in general clear and conclusive that the British Government was still responsible for that act. This Department deems the case an equitable one, and you are accordingly requested to draw Lord Palmerston's favorable attention to it.

Two objections, not adverted to by the attorneys of the claimants, may be anticipated:

1. It may be said that the claimants, according to the ordinary practice of the British courts, had a right of appeal to the Lords of Appeal, and that as they did not avail themselves of that right, they must be presumed to have acquiesced in the decision of the Admiralty Court.¹

¹ For failure to exhaust judicial remedy, see Wheaton's Digest of International Law, § 241, Non-exhaustion of local judicial remedies.

2. That the lapse of time since that decision strengthens the presumption referred to, and bars any liability of that Government.

To these objections it may be answered that the claimants had incurred great expense in the prosecution of their rights before the Admiralty Court, and had not the means for carrying the case further in the form in which it was there presented. That they were compelled, by the loss of the vessel, to adopt that form ; and that the decision of Sir William Scott left no reasonable ground to believe that the Lords of Appeal would affirm the personal liability of the captor.

The delay in presenting the case directly to that Government has been occasioned by the death of the parties originally interested, and by the ignorance of those who now represent them as to the proper course to be pursued for the purpose of obtaining justice. Under these circumstances, it is hoped that the British Government will waive the technical objections referred to, and will pay the indemnification asked for.

I am, Sir, very respectfully, your obedient servant,

DANL. WEBSTER.

Haytian Affairs

Mr. Webster to Mr. Walsh.

DEPARTMENT OF STATE, Washington, January 18, 1851.

SIR: In a circular note to your predecessor, Mr. B. E. Green, of the 22d of February last, and to the British and French consuls at the city of St. Domingo, the Minister of Foreign Affairs of the Dominican republic solicited the mediation of the governments of the United States, France, and Great Britain, for the purpose of bringing about a peace between the empire of Hayti and that republic. It is presumed that a copy of the circular was forthwith communicated to their respective governments by the two last named functionaries, for in a note to the Department, of the 11th May last, Sir Henry L. Bulwer, her Britannic Majesty's minister here, stated that he had been instructed to represent that the French Government had expressed its willingness to co-operate with the governments of Great Britain and of the United States for the purpose adverted to, and suggested a course to be pursued. Mr. Clayton replied, under date the 20th of May, that upon the return of Mr. Green to Washington his correspondence would be submitted to the Senate with a nomination of a chargé d'affaires to the Dominican republic, and that if the nomination should be confirmed the President would be prepared to co-operate with the governments of England and France in the manner and for the purpose suggested. The short interval which elapsed between the return of Mr. Green and the decease of President Taylor, combined with other circumstances, prevented the nomination referred to, and it has since, upon reconsideration, been deemed expedient to confide the business, on the part of this Government, to a special agent. You have accordingly been selected to act in that character. You will herewith receive letters from Sir Henry L. Bulwer and M. Boislecomte, introducing you to the

consuls of Great Britain and France respectively at Port au Prince and the city of St. Domingo. You will also receive a copy of the instructions which, pursuant to orders from his Government, Sir Henry proposes to address to Mr. Usher, the British consul at Port au Prince; and I am assured by M. Boislecote that his Government will address instructions of a similar tenor to the consul of France at the same place. The motives and objects of the intervening parties are so clearly and luminously set forth in these instructions, that it is unnecessary for me to advert to them. I entirely concur in the views which they express, and expect that you will be governed by them. On arriving at Port au Prince, you will accordingly seek a conference with Mr. Usher and the consul of France upon the subject of your mission, and particularly with a view of inducing the Emperor Soulouque to consent to a lengthened truce, or a permanent peace with the Dominicans. As in co-operating for this end the three governments are actuated by philanthropic views, to which they believe any material interests which all or either may have in the question are quite subordinate, you will endeavor, in all your communications with your colleagues, and with either the Dominican or the Haytian governments, to keep your mind free from any prejudice resulting from color or forms of government. You will not deny justice to the Emperor Soulouque because he and his subjects are of African extraction and his Government professes to be monarchical; and you will not be partial in your judgments in favor of the Dominican Government because its officers are supposed to be for the most part of the Castilian race, and because it claims to be republican in its form.

The material interests of the three countries, however, are largely involved in the restoration and preservation of peace between the contending parties in St. Domingo. France is a creditor of the Government of the Emperor Soulouque to a large amount. She cannot hope for a discharge of her debt when the resources of his country, instead of being developed by pacific pursuits and in part, at least, applied to that purpose, are checked in their growth and wasted in a war with a continuous state. Great Britain and France are both interested in securing that great additional demand for their productions

which must result from the impulse to be expected for industry in Hayti and the Dominican republic from a termination of the war ; and the United States have a similar interest, both from the augmentation of their trade with the island which would then ensue and from the consideration that their commercial prosperity is intimately connected with that of both France and Great Britain. When, therefore, you shall have held free and full conferences with your colleagues and shall have ascertained the reciprocal claims of the parties to the war, if the Emperor Soulouque shall insist upon maintaining a belligerent attitude until all his demands shall have been satisfied by the opposite party, you will unite with your colleagues in remonstrating against this course on his part. If the remonstrance should prove to be unavailing, you will signify to the Emperor that you shall give immediate notice to your Government, that the President, with the concurrence of Congress, may adopt such measures, in co-operation with the governments of England and France, as may cause the intervention of the three powers to be respected ; and you will lose no time in communicating the result to this Department. The Emperor should be made properly aware of the dangers which he and his country may encounter, if he should be unfortunately advised to reject reasonable terms of pacification ; but you will stop at remonstrance until further orders.

If, however, your joint and concurrent representations should induce the Emperor Soulouque to make an abatement of his demands, which you and your colleagues may deem reasonable, you will, in concert with them, make this known to the Dominican Government, and will recommend their adoption of a peace on that basis. You will, however, give a patient hearing to any objections which that Government may advance, and if you and your colleagues should deem those objections solid, you will communicate them to the minister for foreign affairs of Hayti and will require from him an answer to them. If this answer should not be given within a reasonable time, or if when given it should not prove to be satisfactory, you will then, conjointly with your colleagues, require the Emperor to conclude a permanent peace with the Dominican Government, upon the basis which you may jointly prescribe to him, or to

consent to a truce with that Government of not less than ten years.

You will write to the Department as frequently as opportunities may permit, in order that, if further instructions should be necessary, they may, after consultation with the ministers of Great Britain and France, be transmitted accordingly.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

To R. M. WALSH, Esq., &c., &c.

Mr. Webster to Mr. Walsh.

DEPARTMENT OF STATE, Washington, January 18, 1851.

SIR: Mr. B. E. Green was instructed to propose to the Haytian Government an arrangement for the reciprocal recognition of United States consuls in Hayti and of Haytian consuls in the United States. Any arrangement which he might make for the purpose, however, was not to bind his own Government until made known here for consideration. Accordingly, upon his application, the commercial agents of the United States in Hayti were recognized as consuls, and the department has received a letter from the minister for foreign affairs of Hayti, under date of the 7th of June last, announcing the appointment of Mr. B. C. Clark as Haytian consul at Boston, and requesting his recognition in that character. With this request we are not prepared to comply; but we are willing that he or any other person, not of African extraction, should be appointed commercial agent of Hayti at Boston or any other United States port where Haytian commerce may be supposed to require such officers. This is the class of officers which the United States now have, and for many years past have had residing in certain Haytian ports. They had experienced inconvenience in discharging their duties from the refusal of the Haytian authorities to correspond with them in their official character. This Government, however, would have no objection to receive and consider any communication which the commercial agents of Hayti in the United States might address to it respecting the commercial or navigating interests of that country, and will therefore expect that the commercial agents

of the United States in Hayti will receive similar treatment from that Government.

You may inform the Haytian minister for foreign affairs that there is nothing in this arrangement which ought to offend any just pride in his Government. It is the course ordinarily adopted and assented to by governments who, for reasons of high expediency, may not think proper to commission or receive consuls to reside at particular ports. The United States have a commercial agent at St. Thomas, because the Danish Government declines to recognize a consul there.

It is to be presumed, however, that, in process of time — and perhaps before long — if the Haytian Government shall abandon its ambitious projects of foreign conquest, shall devote its attention to the improvement of its own people and shall succeed in that object, so as to command the respect of dispassionate and impartial men, no nation whose interests may dictate the measure, will hesitate to send consuls to their ports, or to recognize Haytian consuls in its own ports.

I am very respectfully, your obedient servant,

DANIEL WEBSTER.

To R. M. WALSH, Esq., &c., &c.

The Lopez Expedition against Cuba

Mr. Webster to Mr. Barringer.

DEPARTMENT OF STATE, Washington, September 5, 1850.

SIR: I transmit to you a copy of a correspondence which has recently passed between the Spanish minister and myself on the subject of supposed new schemes against the island of Cuba, by which you will perceive that the President has directed me to make to the former the most friendly assurances as to the fixed determination of the executive to cause a rigid enforcement of the existing laws. You will take the earliest opportunity to repeat these assurances to the Government of Spain, with a view to calm those natural feelings of alarm and anxiety on these subjects, which Mr. Calderon has constantly represented to this Government as existing in a great degree on the part of Spain.

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I am, sir, respectfully, your obedient servant,

DANIEL WEBSTER.

D. M. BARRINGER, Esq., &c., &c., &c., *Madrid.*

Mr. Webster to Mr. Barringer.

DEPARTMENT OF STATE, Washington, Feb. 5, 1851.

SIR: Shortly after the receipt of your despatch No. 39, of the 8th November last, in which you say "that, if it be the purpose of our Government to take any further step in reference to the case of the Contoy prisoners, or that of the two vessels taken at the same time and condemned and sold by order of

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the Spanish courts, I will await your instructions on that subject," I had an interview with Mr. Loud, one of the owners of the *Susan Loud*, on the subject of their claim against the Spanish Government for indemnification for losses occasioned by the seizure of that vessel. I acquainted Mr. Loud with all that had been done, and with the instructions of this department; and I stated to him that the matter would have been followed up, and the claims originating in the capture of that vessel and of the *Georgiana*, off Contoy, would have been re-asserted and forcibly urged upon the Spanish Government, if the Department had been fully furnished by the parties interested with the necessary documents and evidence to explain the nature of their claims, and to substantiate the amount of indemnification due them for the losses incurred by the outrage. He was told it was desirable that all the claims connected with this business should be submitted together to the Spanish Government, and was requested to transmit, as early as possible, to the Department, the required documents and evidence, and to desire his fellow-sufferers, the owners of the *Georgiana*, to do the same with regard to their claim for losses and injury springing from the same cause. Indeed, I had hoped, ere this, to have been enabled to furnish for your use the necessary materials, with instructions to renew your application to her Catholic Majesty's Government for the early acknowledgment of the equity of these claims — an act of sheer justice, which, however, cannot fail to promote the friendly relations of the two countries.

I feel that it is due to you, in closing this letter, to express my entire approbation of the manner in which these claims have been maintained by you in your correspondence with the Marquis de Pidal. Spain must be made to understand that the Executive of the United States will not submit to behold an injury done to persons or property under the flag of the Union, without holding to a strict responsibility the Government by whose officers such an injury may have been inflicted.

I am, sir, respectfully, your obedient servant,

DAN'L WEBSTER.

DANIEL M. BARRINGER, Esq., &c., &c., &c., *Madrid*.

Mr. Webster to Don A. Calderon de la Barca.

DEPARTMENT OF STATE, Washington, September 3, 1850.

SIR: I have received your note of the 20th ultimo, referring to a previous note of the 26th of the preceding month, in both of which you advert to renewed attempts, having for their objects another expedition against the island of Cuba, and enclosing a copy of a circular, alleged to have been addressed by Narciso Lopez to wealthy and respectable subjects of Spain, Cubans, travelling in the United States, calling upon them to assist him, either in person or by pecuniary contributions, in his unlawful projects.

The President, to whom your note has been submitted, has given to the subject the mature consideration which its importance deserves, and has directed a circular to be prepared and transmitted without delay to the marshals, district attorneys, and collectors of customs of the principal ports of the United States, with the express object of renewing former instructions, and of enjoining upon them in the most serious manner a strict enforcement of the existing laws of the United States. I have the honor to communicate to you, herewith, a copy of that circular.

You may be assured, Mr. Minister, and you may assure your Government, that the Government of the United States will not only not lend any countenance to the fitting out of expeditions in this country to make war upon Spain, or any of her possessions; but that it will, to the full extent of its obligations under treaties, and of its duty under existing laws, exercise its authority to prevent and repress such expeditions. You are aware that, among modern and civilized States, the United States were the earliest in restraining, by severe legal penalties, any such violations of neutrality as the setting on foot of military expeditions to make war on a country with which they are at peace.

Any information respecting the intentions or acts of the individuals you refer to, which may come to your knowledge, will, if communicated to this Department, receive immediate attention and be transmitted to the proper officers of the law, with suitable instructions.

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To the district attorney at New York will be transmitted, with a copy of the circular to marshals, &c., &c., a copy of your note of the 20th ultimo and its enclosure.

To satisfy you and your Government, Mr. Minister, that the authorities of the United States, in all branches of the government, are acting in entire good faith and with full intent to execute the laws of the land, I subjoin to this letter a copy of a charge or direction given by the judge of the United States court in New York, to the grand jury, calling their attention solemnly and particularly to any cases, if such shall be presented, of the violation of those laws.

And, although I believe that you have already been furnished with a copy of the act of Congress passed in this respect, yet I take the liberty to accompany this with a transcript of the principal sections of that act.

I avail myself of this occasion to renew to you, Mr. Minister, the assurances of my distinguished consideration.

DANIEL WEBSTER.

CIRCULAR.

Secretary of State to the marshals, district attorneys, and collectors of the United States.

DEPARTMENT OF STATE, Washington, September 3, 1850.

The minister of Spain to this Government has on several occasions expressed his conviction, founded, as he thinks, upon reliable information, that a new attempt is about to be made, and has, indeed, been begun, to invade the island of Cuba a second time; and that the principal cities of the United States, and especially New York and New Orleans, are the chief places in which these illegal purposes are entertained, and such invasion most likely to be set on foot.

The President has, therefore, directed me to call your particular attention to the proclamation of his predecessor of the 11th of August, 1849, and to renew, by his authority, the orders and instructions in that proclamation contained. You will exercise, respectively, all the powers of your several offices in maintaining the laws of the country, and arrest, by proper legal proceedings, the first act which shall come to your knowl-

edge, performed in violation of those laws, and intended to disturb the peace of the country, by invading, with military force, the possession of a friendly power.

I am, respectfully, your obedient servant,

DANIEL WEBSTER.

Mr. Webster to Don A. Calderon de la Barca.

DEPARTMENT OF STATE, Washington, October 3, 1850.

Mr. Webster presents his respects, and communicates to Mr. Calderon a copy of a letter from Mr. Hall, district attorney of the United States for the southern district of New York, dated yesterday, and of two previous letters from the same to this department; one of the 28th June last, and one of the 9th ultimo — all having reference to supposed designs again to invade the island of Cuba.

Mr. Webster hopes that a perusal of these papers will tend to relieve Mr. Calderon's mind of a portion of the anxiety with which it has been charged upon this subject, by statements which either have no foundation in truth, or were greatly distorted and exaggerated.

Mr. Webster adds to the above papers a copy of his instructions to Mr. Hall, of the 7th ultimo, and offers to Mr. Calderon the assurances of his regard.

Mr. Webster to J. Prescott Hall, United States district attorney, New York.

DEPARTMENT OF STATE, Washington, September 7, 1850.

SIR: There seems to be good reason for believing that certain persons in the city of New York are now planning and setting on foot, or attempting to set on foot, another expedition against Cuba. It is represented that they meet nightly for drill and exercise, and to concert means of action; but we have not learned the place of meeting. General Lopez is in that city; and, by watching his movements, their place of rendezvous might probably be discovered.

A young gentleman by the name of Kendall, who has been in the city, perhaps residing there, but is now, I believe, at

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Hanover, New Hampshire, on a visit, has been applied to by some of the persons engaged in this affair ; and, if he could be found, would doubtless be able to give some information. The President wishes you to make immediate and strict inquiry into the truth of the suggestions which I have stated ; and, if anything shall be discovered clearly bringing any individuals within the penalty of the law, that you will cause such individuals to be immediately arrested. All necessary expenses incurred in pursuing the inquiry will be defrayed by this department.

It would be very well that Lopez himself should be arrested, if sufficient proof against him can be obtained. You will consider this communication as official and confidential.

Yours respectfully,

DANIEL WEBSTER.

J. PRESCOTT HALL, Esq.,

Attorney of the U. S. for Southern district of New York.

Mr. Webster to Mr. Hunton.

DEPARTMENT OF STATE, Washington, January 20, 1851.

SIR: The consul of Spain in New York having, under date of the 15th instant, represented to the Spanish minister here the suspicious circumstances under which the steamer *Fanny* had just sailed for New Orleans from the port of New York, laden in part with arms, Mr. Calderon addressed, on the 17th instant, a note to this Department, covering a copy of the consul's letter, and asking the Government to issue the proper orders for frustrating any unlawful designs which may be entertained by those interested in the said steamer.

By the President's directions I transmit translations of both these letters, and enjoin upon you, and upon the collector of New Orleans, to whom you will submit their contents, the exercise of special vigilance in reference to the steamer *Fanny*. Frequent and special instructions have been given by this Department to the proper officers of the Government, who have been ordered to keep up a constant watch upon all movements like that to which suspicion now points, and those officers will be held to a strict accountability for the manner in

which they discharge their duty under those instructions. The President is resolved to employ all the power with which he is clothed, to prevent aggression from our soil upon the territories of friendly states.

I am, sir, respectfully, your obedient servant,

DANIEL WEBSTER.

LOGAN HUNTON, Esq.,

United States District Attorney, New Orleans.

Mr. Webster to Mr. Barringer.

DEPARTMENT OF STATE, Washington, 10th January, 1852.

SIR: I have already acknowledged the receipt of your despatch, of the 12th ultimo, conveying the gratifying intelligence of the Act of Grace extended by Her Catholic Majesty to all those American prisoners who had been engaged in the late invasion of the Island of Cuba. Cheering as these tidings were to us, they still left something to wish for. Some of the participators in that invasion were native citizens of other countries, and of these a part, probably, naturalized citizens of the United States, and part not naturalized, and only unfortunate exiles from their native land. Of the latter class is one Louis Schlesinger, a Hungarian by birth, in whose behalf application has lately been made to me, as you will perceive by the papers herewith enclosed.

Although I cherish the hope that the Royal Pardon will have included every one of those prisoners, without distinction, — a hope the more natural as Her Catholic Majesty had previously pardoned those of them who are subjects of Her Britannic Majesty, I still feel it to be my duty to recommend to your special attention any individuals who may have been excluded from the benefit of Her Majesty's grace.

All the persons who embarked in the Pampero at New Orleans or Key West as members of the Lopez expedition may, I hope, be considered as citizens of the United States, so far, at least, as not to be made objects of unfavorable discrimination.

In assuring Her Majesty's Government of the great gratification with which Her previous clemency has been received by

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the people of this country, you will at the same time represent the case of the unfortunate men, still in confinement, and ask the same forgiveness for them.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

D. M. BARRINGER, ESQ., &C., &C., &C., *Madrid*.

Mr. Webster to Mr. Barringer.

DEPARTMENT OF STATE, Washington, 12 February, 1852.

SIR: Your despatches to No. 76, inclusive, have been received.

The intelligence of the pardon and release of the citizens of the United States, connected with the late expedition of Lopez against the Island of Cuba, and of Mr. John S. Thrasher, has been highly acceptable. Your proceedings with a view to that result, and your correspondence with the Minister for Foreign Affairs of Her Catholic Majesty, deserve commendation and are entirely approved. Pursuant to the recommendation of the President, Congress has made an appropriation of six thousand dollars towards defraying the expenses incurred on behalf of the prisoners while they were in Spain and on their way to the United States. Of this the Consul at Cadiz and other ports where the prisoners, or any of them, are known to have been, or are likely to be, have been informed.

I am, Sir, very respectfully, your obedient servant,

DAN'L WEBSTER.

TO DAVID M. BARRINGER, ESQR., &C., &C., &C., *Madrid*.

Marriage and Divorce

The Law of the Place

Mr Webster to Robert P. Letcher.

DEPARTMENT OF STATE, Washington, 29th January, 1851.

SIR: I transmit a copy of a letter, under date the 20th instant, addressed to the Department by Mr. J. B. Sutherland, of Philadelphia, requesting the interposition of the Government for the purpose of preventing the forcible separation of Doctor Grayson M. Provost from his wife, a Mexican lady to whom he was married at Brownsville, in Texas, and with whom he is now residing at Zacatecas in Mexico. It is presumed that the Mexican ecclesiastical authorities found their proceedings upon the fact, that the clergyman to whom the parties applied at Matamoras refused to perform the ceremony, and that as they repaired to Brownsville, and were married there in consequence of that refusal, the marriage was illegal according to the Mexican laws, and therefore that the church authorities have a right, and are under the obligation, to annul it and separate the parties. It appears that Doctor Provost had himself addressed a letter to you upon the subject, and it is hoped that it will have reached you in season to enable you to prevent the result which he apprehended. It may be, that the local clergymen concerned have proceeded in conformity to the laws of the Republic and the rules of the Catholic Church as established in Mexico, and therefore that any official application to the Mexican executive would be premature, if not improper. The case, however, seems to be so urgent, and the execution by the priests at Zacatecas of their threats would so certainly excite bad feeling in the United States, that it is deemed advisable for you to hold direct communication upon the subject with the

head of the Church at the City of Mexico. You will accordingly request him to instruct the subordinate clergymen in Zacatecas to suspend, and if possible discontinue their proceedings, and express a hope that the rules of the Church may be so altered as to prevent a recurrence of such cases. From the proximity of the two countries, the intercourse between them, and the likelihood of frequent intermarriages between their respective citizens, it is desirable that the rule upon this subject should be uniform in the United States and in Mexico. In this country, in England, and in most nations on the continent of Europe, a marriage is valid if it has been contracted according to the laws of the place where the ceremony was performed. This may be said to be the almost universal rule. It has been firmly established in England after elaborate discussion and investigation. In one of the principal cases upon the subject, the opinion of the celebrated Spanish jurist Sanchez, in favor of the rule, seems to have been much relied upon. His words are quoted below,* and ought certainly to be respected by the Mexican Church.

You may refer the Mexican Archbishop to the passage and also to the character of Sanchez and of his Treatise de Matrimonio, expressed by Pope Clement VIII. also quoted below.†

Marriages between Protestants and Catholics are frequent in this country. Although the clergy of that persuasion may in general suppose that this may in some degree conflict with the welfare of their Church, it is believed that they seldom if ever seriously oppose such marriages, though some of them may

* Quæ petunt leges loci, ubi contractus initur, et quoad solemnitatem adhibendam in contractibus, solæ leges loci, in quo contractus celebratur, inspiciuntur. Locus autem, ubi hoc matrimonium initur, non petit eam parochi et testium solemnitatem ad matrimonii valorem, cum ibi decretum Tridentini non obliget. Ea solemnitas adhibenda est, quam petunt leges loci, ubi contractus initur; cum ergo locus, ubi celebratur matrimonium, ab his peregrinis exegat solemnitatem Tridentini in eo vigentis; aliter contractum nullum erit. Story's Conflict of Laws, p. 113.

† Vehementer admiratus est subtile hominis acumen, peracre judicium, raram perspicuitatem, singularem et exquisitam in rebus indagandis solertiam, in tradendis facillimam methodum, in evolvendis citandisque. Auctoribus exactissimum et planè indefessum studium; serioque pronuntiavit, nullum unquam Scriptorem extitisse, qui dubias de Matrimonio controversias uberius et accuratius enodasset. . . . Bayle. Article "Sanchez."

object to performing the ceremony if a Protestant clergyman is also to have an agency therein. It is an unquestionable fact, however, that many marriages take place between Catholics and Protestants in which the ceremony is performed by clergymen of both denominations.

Although all Christian sects are equal before the law in this country, it is believed that the Catholics themselves do not object to this.

Offices of honor and trust are open to them equally with Protestants, although the latter constitute a large majority of the population. The fact that the Chief Justice of the United States is a Catholic is a signal instance of this. If the Mexican clergy or government and the people of that country should not be prepared to adopt the system of religious tolerance which prevails in the United States, it is hoped that they will relax the rule which forbids a priest from marrying a Protestant to a Catholic, and makes it obligatory upon the clerical and other authorities to disavow and annul such marriage when it has taken place in the United States. In your communications with the Archbishop upon this topic, you will be frank and conciliatory, and you will particularly endeavor to avoid leaving an impression that we desire anything inconsistent with the prosperity or even substantial supremacy of his church in Mexico. On the contrary, we are actuated by the belief that, if the rule is rigidly enforced there, it will tend to produce an excitement in this country hazardous to its peace and perhaps prejudicial to the interests of Catholics in the United States.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO ROBERT P. LETCHER, ESQUIRE, &C., &C., &C.

The Mission to Japan

Mr. Webster to Commodore Aulick.

DEPARTMENT OF STATE, Washington, June 10, 1851.

SIR : The moment is near when the last link in the chain of oceanic steam navigation is to be formed. From China and the East Indies to Egypt, thence through the Mediterranean and Atlantic ocean to England, thence again to our happy shores, and other parts of this great continent ; from our own ports to the southernmost part of the isthmus that connects the two western continents ; and from its Pacific coast, north and southwards, as far as civilization has spread, the steamers of other nations and our own carry intelligence, the wealth of the world, and thousands of travellers.

It is the President's opinion that steps should be taken at once to enable our enterprising merchants to supply the last link in that great chain which unites all nations of the world, by the early establishment of a line of steamers from California to China. In order to facilitate this enterprise, it is desirable that we should obtain, from the Emperor of Japan, permission to purchase from his subjects the necessary supplies of coal, which our steamers on their out and inward voyages may require. The well known jealousy with which the Japanese empire has, for the last two centuries, rejected all overtures from other nations to open its ports to their vessels, embarrasses all new attempts to change the exclusive policy of that country.

The interests of commerce, and even those of humanity, demand, however, that we should make another appeal to the sovereign of that country, in asking him to sell to our steamers, not the manufactures of his artisans, or the results of the toil of his husbandmen, but a gift of Providence, deposited, by

the Creator of all things, in the depths of the Japanese islands for the benefit of the human family.

By the President's direction, I now transmit to you a letter to the Emperor of Japan, (with an open copy,) which you are to carry to Yedo, his capital, in your flag-ship, accompanied by as many vessels of the squadron under your command as may conveniently be employed in this service. A Chinese translation of this letter will be furnished to you by the United States Legation at Canton, or sent to your anchorage at Hong Kong or Macao.

At one of the latter places you will probably meet with a national vessel, detached by the commodore of the squadron in the Pacific, (as you will perceive by the enclosed copy of a correspondence between this and the Navy Department,) to carry to you a number of shipwrecked Japanese mariners, who were some time ago picked up at sea by the bark Auckland. These men you will take with you to Yedo, and deliver them over to the officers of the emperor, giving them, through your interpreter, the assurance that the American Government will never fail to treat with kindness any of the natives of Japan whom misfortune may bring to our shores, and that it expects similar treatment of such of its own citizens who may be driven on the coasts of Japan.

The letter of the President to the Emperor of Japan you will deliver to such of his high officers as he may appoint for the purpose of receiving it. To them you will also explain the main object of your visit.

Mineral coal is so abundant in Japan that the Government of that country can have no reasonable objection to supply our steamers, at fair prices, with that great necessary of commerce. One of the eastern ports of Nippon would be the most desirable place for this purpose. Should, however, the Government of Japan persist in following out its system of exclusiveness, you might, perhaps, induce them to consent to the transportation of the coal, by their own vessels, to a neighboring island, easy of access, where the steamers could supply their wants, avoiding thus the necessity of an intercourse with any large number of the people of the country.

It is considered important that you should avail yourself of

every occasion to impress upon the Japanese officers with whom you will be brought in contact, that the Government of the United States does not possess any power over the religion of its own citizens, and that there is, therefore, no cause to apprehend that it will interfere with the religion of other countries.

The President, although fully aware of the great reluctance hitherto shown by the Japanese Government to enter into treaty stipulations with any foreign nation — a feeling which it is sincerely wished that you may be able to overcome — has thought it proper, in anticipation of this latter favorable contingency, to invest you with full power to negotiate and sign a treaty of amity and commerce between the United States and the empire of Japan.

I transmit, herewith, the act of the President clothing you with that power, as also copies of the treaty between the United States and China, with Siam, and with Muscat, which may, to a certain extent, be of use to you as precedents. It is important that you should secure to our vessels the right to enter one or more of the ports of Japan, and there to dispose of their cargoes, either by sale or by barter, without being subjected to extravagant port charges; and even more important is it that the Government of Japan should bind itself to protect American sailors and property which may be wrecked on their shores. The second article of our treaty with Muscat, and the fifth article of our treaty with Siam, embrace these objects.

Every treaty has to be submitted to the Senate for ratification, as you are aware. In consideration of the great distance between the two countries, and unforeseen difficulties, it would be prudent, should you succeed in effecting the object proposed to fix the period for the exchange of the ratifications at three years.

I am, Sir, respectfully, your obedient servant,

DANIEL WEBSTER.

COMMODORE JOHN H. AULICK, &c., &c.

Medals for British Officers

Mr. Webster to Mr. Lawrence.

DEPARTMENT OF STATE, Washington, 14th July, 1851.

SIR: I take great pleasure in transmitting to you, herewith, five gold, and thirty-four silver medals, which the President, under a joint resolution of Congress, of the 3d of March, 1847, has caused to be prepared, and which this Government desires to present to the officers and men belonging or attached to the British ships of war in the harbor of Vera Cruz, who so gallantly aided in rescuing from a watery grave many of the officers and crew of the United States Brig Somers, together with a list of the names of the persons for whom these testimonials are intended. It is designed to bestow a gold medal on each of the officers, and a silver medal on each of the men. A copy of the letter from the Secretary of the Navy to this Department on the subject, is also sent.

You will accordingly forward these medals to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs, with a request that he will be pleased to cause them to be delivered, on the part of the Government of the United States, to the respective individuals named in the list.

I am, Sir, respectfully, your obedient servant,

DAN'L WEBSTER.

ABBOTT LAWRENCE, ESQR., &C., &C., &C.

Impressment

Mr. Webster to Mr. Peyton.

DEPARTMENT OF STATE, Washington, July 2, 1851.

SIR: As you have not transmitted to the Department a copy of the papers referred to in your note to Mr. Varas, of the 7th of March, relative to the abduction of the three seamen from the whale-ship Addison, by the marine governor at Valparaiso, no opinion can be formed of the case sufficiently definite to warrant instructions for your guidance in all its particulars. The general tone of your note, and the doctrines which it expresses, are approved.

The facts, so far as they appear, seem to show that the proceeding on the part of the Chilean authorities was arbitrary, and not justified by any apparent necessity. Chile was at peace with all the world. Those governments which assert a right to the services of their subjects, who may be seamen on board of the vessels of other nations, do not often exercise this right by taking them from such vessels in time of peace. The Department, however, was not aware that Chile claimed the right even in time of war. The sudden use of the power, even in her own waters, at a period of profound peace, and without justifiable necessity, would be an act of variance with the comity of nations for which her Government may justly be held responsible. It is presumed that the impressment was not authorized by any law of Chile, and that the sailors had not offended against any law of that republic. If, however, the circumstance that two of the seamen were Chileans might afford some palliation for the proceeding, the fact that one of them was a Frenchman heightens its arbitrary character. If we were quietly to submit to this, we could not remonstrate

if the many English sailors on board our merchant vessels at Havana, or Rio de Janeiro, were to be removed from them to gratify the caprices of Spanish or Brazilian officers, or to make up any alleged deficiency in the crews of vessels under their command. Such acts would embarrass commercial enterprise, and engender a feeling at variance with that good understanding with foreign governments which we wish to preserve, so far as the most patient moderation and forbearance compatible with a just regard for our interests will allow. . . .

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

BALIE PEYTON, ESQR., &C., &C., &C.

The Hawaiian Islands

Mr. Webster to Mr. Brown.

DEPARTMENT OF STATE, Washington, 15th March, 1843.

SIR: The accompanying message of the President to Congress of the 30th of December last, transmitting a correspondence between this Department and certain agents of the Sandwich Islands then in this city, will acquaint you with the view which he entertains of the relations between the United States and those islands, and with the objects and motives of this Government for cultivating and strengthening those relations. Congress having complied with his suggestions by providing for a Commissioner to reside at the islands, you have been chosen for that purpose. A commission appointing you to the office will be found among the papers which you will receive herewith, and a letter from this Department addressed to that minister of the King of the islands who may be charged with their foreign relations, accrediting you in your official character. The title selected for your mission has reference in part to its purposes. It is not deemed expedient at this juncture fully to recognize the independence of the islands or the right of their Government to that equality of treatment and consideration which is due and usually allowed to those governments to which we send and from which we receive diplomatic agents of the ordinary ranks. By this, however, it is not meant to intimate that the islands, so far as regards all other powers, are not entirely independent; on the contrary, this is a fact respecting which no doubt is felt, and the hope that through the agency of the Commissioner that independence might be preserved, has probably, in a great degree, led to the compliance by Congress with the recommendation of the President.

It is obvious, from circumstances connected with their position, that the interests of the United States require that no other power should possess or colonize the Sandwich Islands, or exercise over their Government an influence which would lead to partial or exclusive favors in matters of navigation or trade. One of your principal duties therefore, will be to watch the movements of such agents of other governments as may visit the islands. You will endeavor to obtain the earliest intelligence respecting the objects of those visits, and if you should think that, if accomplished, they would be detrimental to the interests of the United States, you will make such representations to the authorities of the islands as in your judgment would be most likely to further them. You will also endeavor to impress upon those authorities the necessity of abstaining from giving just cause of complaint to the governments of those powers whose policy is to increase their possessions and multiply their colonies abroad. This duty can best be performed by the prompt and impartial administration of justice according to the laws and customs of the islands, in such cases of difference as may occur between their officers and citizens and the officers, citizens, or subjects of other governments.

You will give the Government of the Sandwich Islands distinctly to understand that the Government of the United States in all its proceedings, and in setting on foot your mission, has not in any degree been actuated by a desire or intention to secure to itself exclusive privileges in matters of navigation or trade, or to prevent any or all other commercial nations from an equal participation with ourselves in the benefits of an intercourse with those islands. We seek no control over their Government, nor any undue influence whatever. Our only wish is that the integrity and independence of the Hawaiian territory may be scrupulously maintained and that its Government should be entirely impartial towards foreigners of every nation. In making resolute and stern resistance, therefore, to any claim of favor or exclusive privilege by other powers, you will at all times frankly disavow any desire that favors or exclusive privileges should be granted to the United States, their ships, commerce, or citizens.

You will transmit to the Department full and exact information respecting the trade of the United States and of other nations with the islands. Any suggestions which may occur to you having in view any improvement of the commerce of the United States with the islands will be acceptable. Your attention is particularly requested to the nature of the fiscal regulations in force there, to their effects upon foreign commerce generally, and to the policy of the Government in regard to this subject. If those regulations should be frequently changed, or if there should be cause to apprehend the imposition of discriminating duties upon our navigation and trade, the expediency of negotiating a treaty with that Government which would determine for a series of years the reciprocal rights and duties of the parties in regard to those subjects will be taken into consideration.

After you shall have resided long enough at the Sandwich Islands to have made yourself familiar with the state of public affairs there, and shall have communicated to the Department the results of your observations, you may make a visit to the Society Islands for the purpose of examining and reporting upon their condition and prospects. It is advisable, however, that your absence from your post should not be prolonged beyond the period absolutely necessary for that purpose.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

GEORGE BROWN, Esq.,

Appointed Commissioner of the United States for the Sandwich Islands.

Mr. Webster to Mr. Rives.

DEPARTMENT OF STATE, Washington, June 19, 1851.

SIR: In the despatch from this Department (No. 15) of the 5th of July last, you were instructed with reference to the application of Messrs. G. P. Judd and James Jackson Jarves, special commissioners of the Hawaiian Government, for the mediation of the Government of the United States for the purpose of adjusting the differences between that Government and the Government of France. In your despatch (No. 49) of the

12th of September, you stated that you would avail yourself of the first suitable occasion towards bringing about an amicable adjustment of the controversy. It is believed, however, that you have not since mentioned the subject.

It appears from the accompanying letters addressed to the Department and to the Rev. Rufus Anderson by Mr. Judd, from Panama, that the French Government declined to accept the mediation of the Government of Great Britain, and despatched an agent to the Sandwich Islands, whom Mr. Judd met at Panama, waiting for the arrival of an armed force from Callao, with which he intended to proceed to the islands for hostile purposes. The public journals have since announced that he had reached his destination and had entered upon a correspondence with the Hawaiian Government. This intelligence has given the President much pain. It has also alarmed the American Board of Missions, whose corresponding secretary visited this city last autumn, brought with him the letter from Mr. Judd to the Rev. Mr. Anderson above referred to, and made application for vessels of war of the United States to be sent to the islands for the protection of the persons and property of the missionaries there.

Under these circumstances, if you should not already have made the French Government acquainted with the interest we feel in the independence of the islands, you will lose no time in taking that course.

The proceedings of M. Dillon and the French admiral there in 1849, so far as we are informed respecting them, seem, both in their origin and in their nature, to have been incompatible with any just regard for the Hawaiian Government as an independent state. They cannot, according to our impressions, be accounted for upon any other hypothesis than a determination on the part of those officers to humble and annihilate that Government for refusing to accede to demands which, if granted, must have been at the expense of all self-respect and substantial sovereignty. The further enforcement of those demands which, it appears, is the object of M. Perrin's mission, would be tantamount to a subjugation of the islands to the dominion of France. A step like this could not fail to be viewed by the Government and people of the United States

with a dissatisfaction which would tend seriously to disturb our existing friendly relations with the French Government. This is a result to be deplored. If, therefore, it should not be too late, it is hoped that you will make such representations upon the subject to the minister of foreign affairs of France as will induce that Government to desist from measures incompatible with the sovereignty and independence of the Hawaiian Islands, and to make amends for the acts which the French agents have already committed there in contravention of the law of nations and of the treaty between the Hawaiian Government and France.

I am, Sir, respectfully, your obedient servant,

DANL. WEBSTER.

WILLIAM C. RIVES, Esq., &c.

Mr. Webster to Mr. Severance.

DEPARTMENT OF STATE, Washington, July 14, 1851.

SIR: Your confidential communications, Nos. 6, 7, 8, 9, 10, and 11, have been duly received, submitted to the President, and by him considered.

They relate to a subject of great importance, not only to the Hawaiian Government and its citizens, but also to the United States.

The Government of the United States was the first to acknowledge the national existence of the Hawaiian Government, and to treat with it as an independent state. Its example was soon followed by several of the governments of Europe; and the United States, true to its treaty obligations, has in no case interfered with the Hawaiian Government for the purpose of opposing the course of its own independent conduct, or of dictating to it any particular line of policy. In acknowledging the independence of the islands, and of the Government established over them, it was not seeking to promote any peculiar object of its own. What it did, and all that it did, was done openly in the face of day, in entire good faith, and known to all nations. It declared its real purpose to be to favor the establishment of a government at a very important point in the Pacific Ocean, which should be able to maintain such relations

with the rest of the world as are maintained between civilized states.

From this purpose it has never swerved for a single moment, nor is it inclined, without the pressure of some necessity, to depart from it now, when events have occurred giving to the islands and to their intercourse with the United States a new aspect and increased importance.

This Government still desires to see the nationality of the Hawaiian Government maintained, its independent administration of public affairs respected, and its prosperity and reputation increased.

But while thus indisposed to exercise any sinister influence itself over the counsels of Hawaii, or to overawe the proceedings of its Government by the menace or the actual application of superior military force, it expects to see other powerful nations act in the same spirit. It is, therefore, with unfeigned regret that the President has read the correspondence and become acquainted with the circumstances occurring between the Hawaiian Government and M. Perrin, the commissioner of France at Honolulu.

It is too plain to be denied or doubted that demands were made upon the Hawaiian Government by the French commissioner wholly inconsistent with its character as an independent state, demands which if submitted to in this case would be sure to be followed by other demands equally derogatory, not only from the same quarter, but probably also from other states, and this could only end in rendering the islands and their Government a prey to the stronger commercial nations of the world.

It cannot be expected that the Government of the United States could look on a course of things leading to such a result with indifference.

The Hawaiian Islands are ten times nearer to the United States than to any of the powers of Europe. Five-sixths of all their commercial intercourse is with the United States, and these considerations, together with others of a more general character, have fixed the course which the Government of the United States will pursue in regard to them. The annunciation of this policy will not surprise the governments of Europe, nor be thought to be unreasonable by the nations of the civ-

ilized world, and that policy is that while the Government of the United States, itself faithful to its original assurance, scrupulously regards the independence of the Hawaiian Islands, it can never consent to see those islands taken possession of by either of the great commercial powers of Europe, nor can it consent that demands, manifestly unjust and derogatory and inconsistent with a *bona fide* independence, shall be enforced against that Government.

The substance of what is here said has already been intimated with sufficient explicitness to the Government of France, and we have the assurance of his excellency, M. Sartiges, minister of the Republic of France near the United States, that that Government has no purpose whatever of taking possession of the islands or of acting towards them in any hostile or aggressive spirit.

A copy of this letter will be placed in the hands of the French minister here; another copy will be transmitted to Paris; and another copy you will please to communicate to M. Perrin, the French commissioner, upon the appearance of any disposition on his part or on the part of any French naval commander in the Pacific Ocean to proceed to hostilities against the Government of Hawaii for the purpose of enforcing the demands which have been made upon it on the part of France.

The Navy Department will receive instructions to place, and to keep, the naval armament of the United States in the Pacific Ocean in such a state of strength and preparation as shall be requisite for the preservation of the honor and dignity of the United States and the safety of the Government of the Hawaiian Islands.

DANIEL WEBSTER.

LUTHER SEVERANCE, ESQ.

Mr. Webster to Mr. Severance.

DEPARTMENT OF STATE, Washington, July 14, 1851.

SIR: I have written you a regular official despatch, setting forth the principles of policy which will be pursued by the administration here in whatever respects the Government of the Hawaiian Islands.

I now write you a letter of private instructions, made necessary by suggestions contained in your communications by Lieut. Johnson.

In the first place, I have to say that the war-making power in this Government rests entirely with Congress, and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws. By these no power is given to the Executive to oppose an attack by one independent nation on the possessions of another. We are bound to regard both France and Hawaii as independent states, and equally independent; and though the general policy of the Government might lead it to take part with either in a controversy with the other, still, if this interference be an act of hostile force, it is not within the constitutional power of the President, and still less is it within the power of any subordinate agent of Government, civil or military. If the *Serieuse* had attacked Honolulu, and thereupon the *Vandalia* had fired upon the *Serieuse*, this last act would have been an act of violence against France not to be justified, and, in fact, if not disavowed at Washington it would have been an act of war. In these cases, where the power of Congress cannot be exercised beforehand, all must be left to the redress which that body may subsequently authorize. This you will constantly bear in mind. But, at the same time, it is not necessary that you should enter into these explanations with the French commissioner or the French naval commander.

In my official letter of this date I have spoken of what the United States would do in certain contingencies. But in thus speaking of the Government of the United States I do not mean the executive power, but the Government in its general aggregate, and especially that branch of the Government which possesses the war-making power. This distinction you will carefully observe, and you will neither direct, request, or encourage any naval officer of the United States in committing hostilities on French vessels of war.

Another leading topic in your communication is the proposed contingent surrender by the Government of the islands of their sovereignty to the United States or their annexation to this country.

This is a very important question, and one which you will readily see rises above any functions with which you are charged. It may, indeed, be very proper for you in this case, as well as in all others, to communicate to your Government whatever the Government to which you are accredited desires to have so communicated; but it is very important that on a question involving such deep interests, both domestic and foreign, you should yourself altogether forbear expressing any opinion whatever to the Hawaiian Government. You will see by my official letter, which you are at liberty to communicate to that Government, the disposition of the United States to maintain its independence; beyond that you will not proceed. The act of contingent or conditional surrender, which you mention in your letter as having been placed in your hands, you will please to return to the Hawaiian Government. In this case the Government of the United States acts upon principles of general policy; it will protect its own rights. It feels a deep interest in the preservation of Hawaiian independence, and all questions beyond this, should they arise, must be considered and settled here by the competent authorities.

You inform us that many American citizens have gone to settle in the islands; if so, they have ceased to be American citizens. The Government of the United States must, of course, feel an interest in them not extended to foreigners, but by the law of nations they have no right further to demand the protection of this Government. Whatever aid or protection might under any circumstances be given them must be given, not as a matter of right on their part, but in consistency with the general policy and duty of the Government and its relations with friendly powers.

You will therefore not encourage in them, nor indeed in any others, any idea or expectation that the islands will become annexed to the United States. All this, I repeat, will be judged of hereafter, as circumstances and events may require, by the Government at Washington.

I do not suppose there is any immediate danger of any new menaces from France; still less of any actual attack on the islands by her naval armament. Nevertheless you will keep us constantly and accurately informed of whatever transpires.

Your account of the prosperity of the islands and the fiscal condition of its Government is interesting, and you can be hardly too full and particular in such statements.

Mr. Allen is at present quite unwell at Boston. As soon as he is able he will return to his post. Lieut. Johnson will take this despatch to Panama. If Mr. Allen's illness should continue for any length of time, which we hope may not be the case, Lieut. Johnson will be directed to return without him.

I have the honor, etc.,

DANIEL WEBSTER.

LUTHER SEVERANCE, Esq.

Claims Caused by Indian Depredations in Mexico

Mr. Webster to Robert P. Letcher.

DEPARTMENT OF STATE, Washington, 19th August, 1851.

SIR: The President deems it of the utmost importance that we should be released from the stipulations in regard to Indians contained in the 11th Article of the Treaty of Guadalupe Hidalgo, and the 33d of that of 1831. The stipulations in the former are not reciprocal like those upon the same subject in the 5th Article of the Treaty with Spain in 1795 and the 33d Article of the Treaty of 1831, are unlimited in duration, and impose upon this Government the obligation to prevent and punish the depredations of United States Indians in Mexico without a corresponding stipulation on the part of that Government to restrain, prevent, and punish depredations of Mexican Indians upon the United States.

There can be no doubt that the inhabitants of the northern States of Mexico have suffered severely from Indian depredations since the Treaty of Guadalupe Hidalgo went into operation, and the Mexican Government has complained of them both in representations to our Legation at Mexico and to this Department. It is understood that the suffering parties intend to ask amends from this Government for the losses and injuries which they have sustained, but no claims therefor have yet been formally presented. The treaty, however, does not promise reparation to individual Mexicans who may suffer from the ravages of our Indians, but binds this Government to restrain, prevent, and punish them in the same manner as if they had been directed against our own citizens. This has hitherto been done. The hostile acts of the Indians, whose

homes are in the territory ceded to the United States by the Treaty of Guadalupe Hidalgo, have not been confined to Mexican citizens only, but have probably been as frequent, as destructive, and as barbarous on citizens of the United States, especially of North Western Texas, New Mexico, and California. In the application of its disposable force for the purpose of checking these outrages, this Government has been entirely impartial, and as this is all that the treaty requires, neither the Mexican Government nor the aggrieved inhabitants of that country have just cause of complaint against the Government of the United States. It is obvious that along a frontier of such an extent, most of it a rugged wilderness, without roads of any kind and impassable, not only by wheeled vehicles, but perhaps even horses, no means which could have been employed since the Treaty of Guadalupe Hidalgo went into operations, would have sufficed to prevent incursions of United States Indians into Mexican territory. The subsistence, forage and ammunition of the troops must necessarily have been conveyed from one or the other extremity of the line of boundary, and without roads, this would have been impracticable. It is also notorious that that part of the boundary which extends from the Rio Grande to the Gila, and which is not a natural line, such as those rivers afford, has not yet even been marked. This would in any event have rendered it uncertain where a road for the conveyance of our military stores ought to have been constructed or where our troops should have been posted. The probability, also, that savages dwell on both sides of at least this part of the line, would render it uncertain, in the absence of landmarks, whether depredations from that quarter have been committed by United States or by Mexican Indians.

But although we cannot acknowledge that we have been unfaithful to Mexico on this subject and cannot acquiesce in any construction of the treaty which would make that an absolute which must only have been intended for a relative obligation, if the Treaty should remain as it is, this Government will be constantly liable to imputations of bad faith. Exaggerated and fraudulent claims for indemnification will be preferred against it, and there will be no hope of preserving harmonious relations with the Government of Mexico. Under these circumstances,

the President wishes you to propose to that Government a Convention releasing the United States from the obligations contained in the 11th Article of the Treaty of Guadalupe Hidalgo and containing a mutual release of those embraced in the 33d Article of the Treaty of 1831.

A Full Power, authorizing you to conclude and sign such a Convention is herewith communicated to you. It may be that Mexico expected great results from the stipulations in those Articles. Indeed, Mr. de la Rosa has stated in a note to this Department, that she would never have assented to the Treaty of Guadalupe Hidalgo had it not been for the obligations assumed by this Government in its 11th Article. Still, as it is quite probable she mistakes its real meaning and does not appreciate the difficulties to be surmounted in carrying it into effect according to her understanding of it, if these considerations are properly presented to her, she may be willing to accede to our proposition. As an inducement, however, for her to adopt this course, the President would be willing that the Convention should contain stipulations to pay Mexico a sum not exceeding — dollars, assuming the 3d and 4th instalments due under the Convention of 1843, which were never paid, and also assuming the payment of such claims of citizens of the United States against her as may have originated since the date of the Treaty of Guadalupe Hidalgo. These claims are not numerous, but the aggrieved parties are impatient for relief, which they cannot expect the Mexican Government will of its own accord extend to them in the present state of its finances, and it is impossible to say when their condition will be more flourishing. You are aware that some of the claims are for violations of the 19th Article of the Treaty, occasioned by the refusal of the Mexican authorities to allow commodities imported prior to the surrender of the custom houses, to be carried into the interior and sold. Mr. John Parrot's claim for the seizure of mules by the authorities of Chihuahua which he was taking to California with a pass from the authorities of Durango, is another claim which has recently been examined at the Department and appears to be in every respect well founded. The claim of the heirs of Andrew Curcier of Philadelphia for a denial of justice to them

in the Courts of Chihuahua, is one with the particulars and merits of which you are familiar. There are probably others which have not been presented either to the Legation at Mexico or to this Department. In order that the parties interested in such cases may not be debarred from relief by some future arrangement, it would be advisable to limit the assumption by this Government and the release to Mexico, to such claims as may have been so presented. This course has been adopted on former occasions. The draft of a Convention which you will herewith receive contains such stipulations as are desirable, but you may deviate from it in any manner which your own judgment and the exigencies of the negotiation may dictate and require, except that the sum authorized to be paid to Mexico is considered as a maximum. You will of course endeavor to induce her to accept a smaller sum.

The objects which Mexico sought to compass by the 11th Article of the Treaty of Guadalupe Hidalgo, will in all probability be accomplished with as much certainty and as soon, by means of the ordinary Indian policy of the United States as if that Article were to remain in operation. That policy has generally been successful. As the territories of the nomadic tribes have been narrowed by the advancing tide of civilization, the savages have been restrained by the military force which has preceded or accompanied the settlers, or by means of treaties stipulating peace, which the Indians have found it for their interest to observe. The same course will be pursued in respect to the Indians mentioned in our treaties with Mexico. The vastness of the regions over which they roam, may be an obstacle to its comparative success there, but if the white population shall spread over them with anything like the rapidity with which it has occupied the Indian territory in other quarters of the Union, its ultimate triumph within a reasonable time will be sure.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO ROBERT P. LETCHER, ESQUIRE, &c., &c., &c.

Mexican Affairs

Mr. Webster to Señor de la Rosa.

DEPARTMENT OF STATE, Washington, 4th November, 1851.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. de la Rosa, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, of the 23d ultimo, upon the subject of the insurrection in that republic near the frontier of the State of Texas. In the note from this Department of the 10th ultimo, Mr. de la Rosa was informed that this Government was not in possession of information which, in the judgment of the President, would warrant him in issuing a Proclamation warning citizens of the United States to abstain from engaging in any expedition against Mexico in violation of law, and Mr. de la Rosa was furnished with an extract from a letter of the Attorney of the United States for the District of Texas, stating that the persons who had assembled on Mustang Island had dispersed. A few days after, however, a letter was received at this Department from the Consul of the United States at Matamoras, stating that a body of men from the State of Texas had joined the insurgents in the neighboring Mexican State. The President thereupon lost no time in issuing the Proclamation to which Mr. de la Rosa refers.

It may be true, as he intimates, that the insurrection adverted to has been more or less instigated and fomented by those who have been thwarted in attempting to carry on illicit trade with the Mexican Republic. Such practices have never been and will never be either encouraged or countenanced by this Government, but there is no existing law which authorizes the President to prevent them. All he can do for this purpose, is to decline to interfere in behalf of those who may be detected in them by the Mexican authorities, and to refer

such persons to the courts of justice of that republic for redress. Although the undersigned is persuaded that some who have been charged with the practices referred to, have been justly held amenable to the laws of Mexico, he deems it probable that other persons engaged in the trade with that republic, who had the best intentions strictly to respect its fiscal regulations, have been unjustly accused of contrary intentions, have had their property seized and condemned, and have not been able to obtain the reparation to which they were entitled. It is not unlikely that these persons may have had power to aid in some degree the insurgents in the north of Mexico, and that they considered the provocations they had received sufficient to justify such a course. Mr. de la Rosa and his Government may, however, be assured that if, in so doing, they should have violated the laws of the United States, they will be prosecuted and punished to all the extent which those laws authorize. For this purpose, a copy of Mr. de la Rosa's note has been transmitted to the Attorney of the United States for the District of Texas, with the necessary instructions upon the subject.

Mr. de la Rosa refers to previous complaints addressed by him to this Department relative to injuries committed on the authorities or citizens of the Mexican Republic, near the frontier, by persons in or from the United States. The undersigned is not aware that in any instance all due attention has not been paid to those complaints. The local authorities of the United States have been directed to inquire into them and to cause the persons accused to be arrested for trial and punishment. If these instructions have not been complied with, the undersigned is confident that this should not be imputed to any infidelity on the part of the officers of this Government, but solely to the facilities which the vast extent of the frontier and the sparseness of the population there afford offenders for evading detection and eluding pursuit.

The undersigned avails himself of this occasion to offer to Mr. de la Rosa renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

TO SEÑOR DON LUIS DE LA ROSA, &C., &C., &C.

The Attack on the American Steamer Prometheus

Mr. Webster to Mr. Lawrence.

DEPARTMENT OF STATE, Washington, December 3, 1851.

SIR : I transmit a copy of a letter of yesterday, and of the papers therein referred to, addressed to this Department by Mr. Joseph L. White, as counsel of the American Atlantic and Pacific Ship Canal Company, from which it appears that when the steamship Prometheus, belonging to that company, was under weigh at San Juan del Norte for the purpose of making her last voyage from thence to New York, the city authorities of San Juan boarded her with a police force, and served a process of attachment on the ship and captain for one hundred and twenty-three dollars, claimed by those authorities as port dues, which the captain refused to pay. Thereupon, the English brig-of-war Express, lying in the harbor, immediately got under weigh, made sail for the steamer, and, when within a quarter of a mile of her, fired a round shot over her fore-castle, and a few minutes afterwards another shot over her stern, which passed so near that the force of the ball was distinctly felt by several persons on board. The captain of the steamer then sent a boat on board the brig to inquire the cause of the firing. The captain of the brig replied, that it was to protect the authorities of Greytown in their demands ; that, if the steamer did not immediately anchor, he would fire a bomb-shell into her ; and he ordered his guns to be loaded with grape and canister-shot. The steamer then proceeded to the anchorage and anchored. The brig anchored very near the steamer, sent a boat on board the latter with orders that the fires should be extinguished, and to say that an officer would be sent to see that this was done. The authorities then came

on board, the amount demanded was paid under protest, and the steamer was permitted to proceed to sea. It further appears that the captain of the Express acted under the authority and by orders of a Mr. Greene, who claims to be the British consul at San Juan.

The President directs that you will lose no time in addressing a note upon this subject to Lord Palmerston. You will inquire if the captain of the Express acted pursuant to orders from his Government, and whether his course is approved. You will state that if these questions should be answered in the affirmative, the President would consider the proceeding as a violation of the Treaty of the 19th of April, 1850, by which Great Britain has stipulated that she would not make use of any protection which she might afford Nicaragua, the Mosquito coast, or any part of Central America, for the purpose of assuming or exercising any dominion over the same.

If, as Mr. White says, Lord Palmerston instructed Mr. Greene, in October, 1850, not to interfere with the vessels of the company, and in November of that year again instructed him to make Greytown a free port, it is difficult to believe that these instructions could have been countermanded, as no cause therefor is known to exist.

Perhaps it may be said, that although San Juan be regarded as a free port, that only means that no duties of impost shall be levied or collected on goods, and does not imply that port charges are not to be paid by masters of vessels, as in other ports. This Government, however, cannot consent to the collection of port charges at San Juan by British ships of war, or that their collection should be enforced by them.

The occurrence above referred to has created equal surprise and regret, and has caused the President to give immediate orders for the despatch of an armed vessel to San Juan.

I am, Sir, respectfully, your obedient servant,

DANIEL WEBSTER.

ABBOTT LAWRENCE, Esq., &c., &c., &c.

Non-Intervention in French Affairs

Mr. Webster to William C. Rives.

DEPARTMENT OF STATE, Washington, 12th January, 1852.

SIR: Your despatches have been regularly received up to the 24th of last month.

The movement made by the President of the Republic of France, on the 2d ultimo, created surprise here as well as with you, not only by the boldness and extent of its purpose, but also by the secrecy with which preparation for it had been made, the suddenness of its execution, and the success which appeared to have attended it.

It was quite natural that you should be in no haste to appear at the public receptions of the President, after the overthrow of the written Republican Constitution of France. You sympathize, in this respect, with the great body of your countrymen. If that overthrow had become necessary, its necessity is deeply to be deplored; because, however imperfect its structure, it was the only great Republican Government existing in Europe, and all Americans wished it success. We feel as if the catastrophe which has befallen it may weaken the faith of mankind in the permanency and solidity of popular institutions. Nevertheless, and although our own Government is now the only Republic ranking among countries of the first class, we cling to its principles with increased affection. Long experience has convinced us of its practicability to do good and its power to maintain liberty and order. We know that it has conferred the greatest blessings on the country, and raised her to eminence and distinction among the Nations; and if we are destined to stand the only great Republican Nation, so we shall still stand.

Before this reaches you, the election in France will be over; and if, as is probable, a decided majority of the people should

be found to support the President, the course of duty for you will become plain. From President Washington's time, down to the present day, it has been a principle, always acknowledged by the United States, that every nation possesses a right to govern itself according to its own will, to change its institutions at discretion, and to transact its business through whatever agents it may think proper to employ. This cardinal point in our policy has been strongly illustrated by recognizing the many forms of political power which have been successively adopted in France in the series of revolutions with which that country has been visited. Throughout all these changes, the Government of the United States has conducted itself in strict conformity to the original principles adopted by Washington, and made known to our diplomatic agents abroad, and to the Nations of the World, by Mr. Jefferson's letter to Gouverneur Morris, of the 12th of March, 1793; and if the French people have now, substantially, made another change, we have no choice but to acknowledge that also; and as the diplomatic representative of your country in France, you will act as your predecessors have acted, and conform to what appears to be settled national authority. And, while we deeply regret the overthrow of popular institutions, yet our ancient ally has still our good wishes for her prosperity and happiness, and we are bound to leave to her the choice of means for the promotion of those ends.

I am, Sir, respectfully, your obedient servant,

DANL. WEBSTER.

WILLIAM C. RIVES, ESQRE., &C., &C., &C.

The Mexican Indemnities

Mr. Webster to President Fillmore.

DEPARTMENT OF STATE, Washington, January 23, 1852.

TO THE PRESIDENT OF THE UNITED STATES.

I COMMUNICATE to you, a resolution which passed the House of Representatives yesterday, requesting me to transmit to that House "copies of the notes addressed to the Department of State by the Mexican Minister, M. de la Rosa, (on the subject of the payment of the Mexican indemnity,) in the months of February and March last; together with a statement of any information in relation to the same matter which may have been verbally communicated to his Department by the Mexican Minister, in regard to the wishes of the Mexican Government as to the payment of the money here; and a statement of the terms upon which it was willing to receive it." It is customary for such requests to be addressed to the President, and for the answer to be left subject to his discretion. The departure from usage in this case was probably the result of accident or haste. I know no objection to transmitting to the House a copy of Mr. de la Rosa's notes, but I think it proper that it should be done by your authority. All the notes called for by the resolution are herewith laid before you; and, also, in order that the subject may be properly understood, the note of this Department to Mr. de la Rosa, of the 21st of February last.

It is impossible for me to state, even if it were proper, what conversation took place between Mr. de la Rosa and myself on the subject.

Respectfully submitted,

DAN'L WEBSTER.

Mr. Webster to Mr. de la Rosa.

DEPARTMENT OF STATE, Washington, February 21, 1851.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of the 17th instant, addressed to him by Mr. de la Rosa, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic. That communication appears to have been suggested by what Mr. de la Rosa calls information communicated to the Senate of the United States by the undersigned. This Department has communicated no such information. The Senate, by a resolution of the 10th instant, requested from the President all the information communicated to him by Mr. de la Rosa relative to certain drafts drawn by the Mexican Government on the Treasury of the United States. It is presumed that in adopting this resolution, the Senate was led to suppose that the President might have such information, and had that been the case, the request would probably have been complied with. But as the President had received no such information from Mr. de la Rosa, he referred the resolution to this Department, with directions to the undersigned to report thereon. The undersigned reported accordingly, that no information, such as the resolution called for, was in this Department. The President transmitted this report to the Senate, with a message to that body.

The undersigned flattered himself, that after the expression of the sentiments of this Government, contained in the note of Mr. Buchanan to Mr. de la Rosa, of the 15th February, 1849, Mr. de la Rosa would have abstained from making a message of the President to either House of Congress, a subject of diplomatic representation. He has, however, thought proper to adopt a different course, and although the undersigned, for the reasons mentioned by Mr. Buchanan, might, without disrespect of the Mexican Government, decline to enter into a discussion of such a topic, he is willing, upon the present occasion, to waive any appeal to forms, lest his silence might lead to the inference that there is something substantial in Mr. de la Rosa's note, which requires an explanation or reply, such as

cannot be satisfactorily given. That note is principally occupied with a statement of oral communications made to the undersigned by Mr. de la Rosa, relative to drafts of the Mexican Government upon the Treasury of the United States. The undersigned will not deny that the statement may be substantially correct. As he has preserved no memorandum of the conferences, he is willing to impute any inaccuracies to the fact, that Mr. de la Rosa spoke to him through an interpreter. The undersigned, however, is confident that Mr. de la Rosa said nothing respecting a contract between the Mexican Government and any individual, and he is pleased to see that Mr. de la Rosa himself is doubtful upon this point. Mr. de la Rosa's purpose seemed to be to bring about an acceptance by this Government of the drafts referred to. The transaction thus sought to be effected, seemed to the undersigned so irregular, that he promptly declined to have any agency in gratifying Mr. de la Rosa's wish. In adopting this course, the undersigned was actuated by the considerations, that he could find no stipulation in the treaty of Guadalupe Hidalgo authorizing the Mexican Government to draw bills on the Treasury of the United States, or authorizing that Department to accept or pay them. It seemed to him that the relative rights and duties of the two Governments in regard to the indemnity due under that treaty, and the mode of paying it, were well defined in the treaty itself; that if Mexico desired a change in that respect, she was bound to ask for it in a proper manner through her accredited officers; that such a proceeding as that proposed, would imply either, that an alteration in the treaty had already been made, by competent authority, or that it was in the power of the executive branch of this Government to make such alteration should that be the wish of Mexico. All this appeared to the undersigned to be objectionable and inadmissible; and Mr. de la Rosa will also hardly fail to recollect, that the undersigned, soon after he became charged with the duties of this Department, informed him that he could not entertain any proposition from Mexico, to change the mode of payment of the indemnities, as it stood in the treaty.

Mr. de la Rosa may be assured that, so far as any citizen of the United States may be concerned, the anxiety which he

expresses lest the omission to accept the drafts adverted to may give rise to a claim against the Mexican Government which this Government will urge, is quite unfounded. The Government of the United States is not in the habit of prosecuting claims against foreign governments founded on contracts. It has hitherto experienced, and continues to experience, sufficient difficulties in obtaining reparation from some of those governments for claims of another description. If it should ever deviate from this policy, it will carefully scrutinize any contract for which its protection may be invoked. If it shall then find that the parties to such a contract had no authority to enter into it, or that its subject or the circumstances connected with it were such as it could not approve, any foreign government which might be charged with delinquency need not apprehend any advocacy of such a claim on the part of this Government.

The undersigned is gratified to notice that Mr. de la Rosa concludes his note with an expression of an intention not to pursue the subject further. The undersigned has no doubt of the wisdom and propriety of this determination.

DANIEL WEBSTER.

TO SEÑOR DON LUIS DE LA ROSA, &C., &C.

Negotiations with the Egyptian Government

Mr. Webster to D. Smith McCauley.

DEPARTMENT OF STATE, Washington, 20 April, 1852.

SIR: I have now to acknowledge the receipt of your despatch No. 35, of the 16th ultimo, announcing the successful termination of your protracted controversy and negotiations with the Egyptian Government on the subject of the "Barthow Affair." The final settlement of this claim and your assertion and vindication of the rights and dignity of the American flag, in which you displayed both firmness and prudence, have relieved this Department from considerable embarrassment. The flag of the Consulate being now rehoisted and harmony restored, it is sincerely hoped that nothing will occur in future to render it necessary for you to resort again to so extreme a measure as that to which you have been impelled in striking the United States flag, and interrupting friendly intercourse with a power with which it is our interest and desire to cultivate a good understanding.

In consequence of what you state concerning the impaired condition of your health, your request for leave of absence from your consulate for the space of three months is granted, and you are at liberty to proceed to Trieste, as you propose, to avail yourself of the benefit of the German baths. You will not quit your post, however, unless satisfied that you may do so without injury to the public service, and you will hold yourself in readiness promptly to return to it, if any occasion should require your presence there. The Vice Consul, Mr. Moore, will of course keep you constantly advised of all that transpires at Alexandria during your absence.

In reply to that part of your despatch No. 31, which relates to your losses on bills of exchange, I refer you to a letter addressed to you by the 5th Auditor, on the 6th October, 1851,—two days after your despatch was received at the Department.

I am, Sir, respectfully, your obedient servant,

DANIEL WEBSTER.

D. SMITH McCauley, Esqr. &c., &c., &c.

Alexandria, Egypt.

Deserters from Ship Le Java

Mr. Webster to the Count de Sartiges.

DEPARTMENT OF STATE, Washington, 28th April, 1852.

SIR: I have the honor to acknowledge the receipt of your note of the 17th instant, complaining of the liberation, at San Francisco, in November last, by a Justice of the Peace of that city, of two sailors who had, at the instance of the French Consul there, been previously arrested by the said Justice for desertion from the French ship Le Java, then lying at that port.

This Department does not agree with you, however, in regarding the matter as a grave infraction of the Convention between the United States and France of the 24th of June, 1822. It seems to it that the Consul mistook the proper course of proceeding. Had he made application to the judicial authorities of the Government of the United States in California, instead of to a local magistrate there, whose power to act in the case was at least doubtful, it is quite probable that the deserters would have been given up. Hence it follows that, in that instance, no blame can justly attach to the United States. Sincerely regretting the circumstance, however, the Department has instructed the Attorney of the United States for the Northern District of California to take an early opportunity to confer with the Consul of France at San Francisco on the subject, in order that he may know how to proceed in similar cases in future. As the magistrate at San Francisco either mistook his authority in causing the sailors to be arrested, or erred in discharging them, this Department will address a letter to the Governor of California, inviting his attention to the case.

I avail myself of this opportunity to renew to you, Sir, the assurance of my high consideration.

DAN'L WEBSTER.

The American Policy regarding Cuba

Mr. Webster to Robert P. Campbell.

DEPARTMENT OF STATE, Washington, 14th Jan., 1843.

SIR: A communication, from a highly respectable source, has just been received at this Department, which purports to contain information of so serious a nature, in regard to the present condition of the Island of Cuba, that the President has come to the conclusion that it is expedient to lose no time in ascertaining, if practicable, how far the real facts of the case may correspond with the representations. The name of the individual from whom these accounts have come, is, for good reasons, withheld. It is sufficient to say that they come from the Island, and have been transmitted from thence by a person of high standing, whose statements, as we are told by those who know the source, are believed to be entitled to as much consideration as those of any individual in Cuba. Acting under this belief, and influenced by the consideration that this Government has frequently received intimations from various quarters in regard to Cuba, which give a color of probability to the statements which have thus been recently received, the President has instructed me to make this communication to you, to call your attention to the matter, and to desire you to transmit all the information you possess or can obtain in regard to it.

The necessity of absolute secrecy in everything that relates to the inquiries you are directed to make, and in the transmission of their result to your Government, has obliged us to send to Havana a special messenger, who will take charge of and deliver to you in person this letter, and who will be directed to remain with you for some short time to afford you opportunity to prepare a reply, and to impart all the intelligence

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which may be within your reach. It is proper, however, to apprise you that it is highly desirable that there should be as little detention as possible, as the President is exceedingly anxious to be well informed upon the subject at the earliest practicable moment. The messenger is unacquainted with the contents of this letter; and it is not necessary or desirable that the subject of this correspondence should be in any way made known to him. The amount of the information which has been received is this :

The writer represents himself as bound in honor not to reveal what he has made known to his correspondent in the United States to the local authorities of Cuba, for reasons which can only be guessed at. His statements, confirmed as they appear to be in some particulars by various recent occurrences of a public character, with which you cannot but be familiar, are considered as entitled at least to serious attention, and to call for immediate examination and inquiry.

It is represented that the situation of Cuba is at this moment in the highest degree dangerous and critical, and that Great Britain has resolved upon its ruin; that Spain does not, or will not see this intention; and that the authorities of the Island are utterly incompetent to meet the crisis; that although, according to the treaty of 1817, the slave trade ought not to have been carried on by any subject of Spain, it has, nevertheless, been continued in full vigor up to the year 1841, notwithstanding the incessant remonstrances of the British Government, which was better informed, it is said, from month to month, of everything that took place in the Island, than the Captain General himself.

It is alleged, that the British ministry and Abolition Societies finding themselves foiled or eluded by the colonial and the home Governments have, therefore, resolved, — not, perhaps, without secretly congratulating themselves upon the obstinacy of Spain, — upon accomplishing their object in a different method, by the total and immediate ruin of the Island. Their agents are said to be now there, in great numbers, offering independence to the Creoles, on condition that they will unite with the colored people in effecting a general emancipation of the slaves, and in converting the Government into a *black*

Military Republic, under British protection. The British Abolitionists reckon on the naval force of their Government stationed at Jamaica, and elsewhere, and are said to have offered two large steam ships of war, and to have proposed to the Venezuelan General, Marino, who resides at Kingston, Jamaica, to take the command of an invading army. This is to be seconded, as is suggested, by an insurrection of the slaves and free men of color, supported by the white Creoles. If this scheme should succeed, the influence of Britain in this quarter, it is remarked, will be unlimited. With 600,000 blacks in Cuba, and 800,000 in her West India Islands, she will, it is said, strike a death blow at the existence of slavery in the United States. Intrenched at Havana and San Antonio, ports as impregnable as the rock of Gibraltar, she will be able to close the two entrances to the Gulf of Mexico, and even to prevent the free passage of the commerce of the United States over the Bahama banks and through the Florida channel.

The local authorities are believed not to be entirely ignorant of the perils which environ them, but are regarded as so torpid as not to be competent to understand the extent and imminency of those perils, nor the policy by which Great Britain is guided. The wealthy planters are described as equally blind to the great danger in which they stand of losing their property. They go on, it is said, as usual, buying negroes, clamoring for the continuation of the trade, and denouncing, as seditious persons, and friends of Great Britain, the few who resist the importation of slaves, and encourage the immigration of free whites. The writer points to the census of the population of the Islands, taken by authority, and just published, of which he encloses a copy ; and, from the proportion between the different colors, he infers the probability that the white Creoles will be able to preserve their rights in the future *Ethiopic-Cuban Republic* ; and, as to the Spaniards, he presumes that they will leave the Island at once.

The writer very naturally supposes that the United States must feel a deep solicitude upon a subject which so nearly concerns their own interests and tranquillity. He seems anxious that public opinion in this country should be formed upon it and properly directed, and does not hesitate to express

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the opinion that the mass of the white population of Cuba, in easy circumstances, including the Spaniards, prefer, and will always prefer, the flag of the United States to that of England.

In thus communicating to you the substance of the statements of this writer, you will distinctly understand that your Government neither adopts nor rejects his speculations. It is with his statement of supposed facts that it concerns itself; and it is expected that you will examine and report upon them with scrupulous care and as much promptness as strict secrecy and discretion will permit; and the whole of the statement is now imparted to you, not to limit, but to guide and direct the inquiries you are called upon to make in so delicate a matter. It is quite obvious, that any attempt, on the part of England, to employ force in Cuba, for any purpose, would bring on a war, involving, possibly, all Europe as well as the United States; and as she can hardly fail to see this, and probably does not desire it, there may be reason to doubt the accuracy of the information we have received, to the extent to which it proceeds. But many causes of excitement and alarm exist; and the great magnitude of the subject makes it the duty of the Government of the United States to disregard no intimations of such intended proceedings which bear the least aspect of probability.

The Spanish Government has long been in possession of the policy and wishes of this Government in regard to Cuba, which have never changed, and has been repeatedly told that the United States never would permit the occupation of that Island by British agents or forces, upon any pretext whatever; and that in the event of any attempt to wrest it from her, she might securely rely upon the whole naval and military resources of this country to aid her in preserving or recovering it.

A copy of this letter will be immediately transmitted to the American Minister at Madrid, that he may make such use of the information it contains, as circumstances may appear to require.

I am, Sir, respectfully, your obedient servant,

DANL. WEBSTER.

Private and confidential.

ROBERT P. CAMPBELL, ESQRE., U. S. Consul at Havana.

*Mr. Webster to the Count de Sartiges.*¹

DEPARTMENT OF STATE, Washington, April 29, 1852.

THE undersigned has the honor to acknowledge the receipt of M. de Sartiges's note of the 23d instant, together with the copy of the instruction from M. de Turgot, the French Minister of Foreign Affairs, to M. de Sartiges, bearing date the 31st ultimo.

There is no doubt that M. de Turgot has justly described the course of policy which has influenced the Government of the United States heretofore in regard to the island of Cuba. It has been stated and often repeated to the Government of Spain by this Government, under various administrations, not only that the United States have no design upon Cuba themselves, but that, if Spain should refrain from a voluntary cession of the island to any other European power, she might rely on the countenance and friendship of the United States to assist her in the defence and preservation of that island. At the same time, it has always been declared to Spain that the Government of the United States could not be expected to acquiesce in the cession of Cuba to an European power. The undersigned is happy in being able to say that the present Executive of the United States entirely approves of this past policy of the Government, and fully concurs in the general sentiments expressed by M. de Turgot, and understood to be identical with those entertained by the Government of Great Britain. The President will take M. de Sartiges's communication into consideration, and give it his best reflections. But the undersigned deems it his duty, at the same time, to remind M. de Sartiges, and through him his Government, that the policy of that of the United States has uniformly been to avoid, as far as possible, alliances or agreements with other States, and to keep itself free from national obligations, except such as affect directly the interests of the United States themselves. This sentiment has been strongly felt and uniformly entertained in the councils

¹ This letter, with Lord Malmesbury's name substituted for that of M. de Turgot, was also sent to John F. Crampton, British Minister at Washington.

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of this Government from its earliest history. How far, therefore, it may be necessary to make this case of Cuba an exception, and especially how far any motive may be found for entering into treaty stipulations or exchange of official declarations with the Governments of France and Great Britain, in the existing state of things, upon the subject of Cuba, are questions which, as the undersigned has already intimated, will be maturely considered.

The undersigned avails himself of this opportunity to renew to M. de Sartiges the assurance of his high consideration.

DANIEL WEBSTER.

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Mr. Webster to Señor Ignacio Gomez.

DEPARTMENT OF STATE, Washington, February 7, 1851.

THE undersigned, Secretary of State of the United States, has had the honor to receive the note of the 31st ultimo, addressed to him by Mr. Gomez, announcing his arrival in this city as the diplomatic representative of several of the States of Central America.

The Government of the United States receives Mr. Gomez with great pleasure in the character in which he presents himself; but as the appointment of Mr. Gomez is not recent, and as he is in expectation of receiving shortly fresh instructions, it is deemed expedient to wait till such instructions be received before a full and formal answer be returned to Mr. Gomez's note. In the mean time the undersigned would take this opportunity to observe, that the Government of the United States would see with great pain the prevalence of hostilities in the States of Central America, either between themselves or between any of them and a foreign power.

Recent events, the increase of commerce on both shores bounding this country, the plans for various lines for communication across it by railroads and canals from sea to sea, have given to the whole region a new importance. All must desire that the republics of Central America should now come into the enjoyment of peace and the pursuits of industry, so that they might commence that career of prosperity and progress which their climate, soil, and position seem to invite.

The undersigned avails himself of this occasion to offer to Mr. Gomez the assurance of his high consideration.

DANIEL WEBSTER.

TO SEÑOR IGNACIO GOMEZ, &C., &C.

Mr. Webster to Señor Molina.

DEPARTMENT OF STATE, Washington, March 31, 1851.

SIR: I have the honor to acknowledge the receipt of your note of the 28th instant, expressing the anxiety of your Government to see the philanthropic views of the Government of the United States in regard to Central America carried out as contemplated by the ship canal convention entered into with Great Britain.

In reply, I have the honor to acquaint you that this anxiety is reciprocated by the President of the United States, who has determined to adopt, at once, all proper measures towards accomplishing the object. A distinguished citizen of this country, the honorable J. B. Kerr, late a member of the Congress of the United States, has been appointed and commissioned by the Government of the United States as chargé d'affaires to that of Nicaragua. He will proceed on his mission about the 1st of May. Although accredited to the Government of Nicaragua only, he will be directed by this Department to visit the other governments of Central America, so far as may be in his power, to inquire into the causes of the controversies existing between them, and to urge upon all those governments the propriety of coming to terms of peace and amity between themselves. How desirable it is that those States should be united under one government! The President cannot willingly give up the hope that this will again be accomplished, and Mr. Kerr will be directed to express this sentiment respectfully to them all, and to suggest to their consideration how little the probability is that Central America, now a point so interesting to all nations, can ever attain her proper dignity and proper destiny while divided into so many small States. But if this should be found hopeless, he will still be directed to urge upon all those governments, in the most friendly manner, the necessity of an immediate cessation of hostilities. The interfering claims of the respective governments of Central America can hardly be expected to be justly settled by the sword, and war among such States must be equally ruinous to the conquerors and the conquered.

Mr. Molina will understand that these sentiments are here advanced from no motive but a sincere regard to the interests of that country. In all that exists in Central America and in all that may occur hereafter, the United States pursue no private or selfish end whatever. They will not withhold their good offices or their acts of kindness from any of those States. They wish them all to become prosperous and happy. Their desire for this warrants the Government of the United States not to use any terms of control or dictation, but to signify its good will and to offer its advice with all proper earnestness.

The position of Central America on this continent, at the present moment, excites an extraordinary interest in the civilized world. The lines of communication which are to connect the Atlantic and Pacific seas must, several of them, run through that country. In establishing these communications all civilized commercial States have a direct interest; and it may be taken for granted that this communication will be made, and therefore those governments cannot be too early nor too vigorous in their efforts to establish peace and harmony, if indeed they cannot establish political union among themselves, to the end that the rights of all may be protected and the whole country go forward in the progress of improvement.

I avail myself of this occasion, sir, to offer to you the assurance of my very distinguished consideration.

DANIEL WEBSTER.

SEÑOR DON FELIPE MOLINA, &c., &c., &c.

Mr. Webster to Mr. Kerr.

DEPARTMENT OF STATE, Washington, June 6, 1851.

SIR: On the 3d of September, 1849, a treaty between the United States and Nicaragua was signed at Leon, the 35th article of which relates to a ship canal between the two oceans through the territories of that State; refers to a contract entered into on the 27th of August, 1849, between the republic of Nicaragua and a company of citizens of the United States, styled the "American Atlantic and Pacific Canal Company," requires the United States to recognize the rights of sovereignty and property which Nicaragua possesses over the

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line of said canal, and guarantees the neutrality thereof, so long as it shall remain under the control of citizens of the United States. This treaty was submitted by the President to the Senate in March, 1850. On the 19th of April next ensuing, however, a convention upon the same subject between the United States and Great Britain was signed in this city, by the 6th article of which it is stipulated that, if any differences should arise as to right of property over the territory through which the said canal shall pass, between the States or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

Although it may be taken for granted that a part of the line of the canal here referred to would be in the bed of the river San Juan, or on the northern or southern bank of that stream, it is obvious that it would have been premature for the United States to assume the guaranty stipulated in the treaty with Nicaragua, until the position of the canal had been determined upon. The Department is not aware that this has yet been done. It is well known, that for some time past there has been a dispute between the States of Nicaragua and Costa Rica respecting their boundary, and it is certain that until this shall be adjusted the United States could not undertake to guaranty to Nicaragua dominion over the line of the canal without, impliedly at least, deciding that dispute in her favor, and engaging to maintain that decision by force, should this become necessary. Though the President appreciates the friendship of Nicaragua, he cannot consent even to risk doing an injury to any one of the other Central American States, by determining, without due examination, a controversy which it may have with any other of those States. If, however, a sense of duty were not sufficient to prevent the adoption of such a course on our part, the stipulation in our treaty with Great Britain, above referred to, makes it a positive obligation.

On the 5th of August last Mr. Molina, the Minister of Costa

Rica at London, addressed a note to Mr. Abbott Lawrence, stating that his Government, fully concurring in the philanthropic views set forth in the convention signed at Washington on the 19th of April, 1850, was willing to submit the question of her rights over the territories in dispute between Nicaragua and herself to the combined mediation of the United States and Great Britain, and to regard their joint decision as final, provided that Nicaragua shall have previously placed herself under a similar obligation. Mr. Molina is now the Minister of Costa Rica at Washington. You will herewith receive a copy of a recent correspondence between him and the Department upon this subject. In his note of the 31st of March, he states that his Government claims a right of dominion over all the country lying on the southern bank of the river San Juan, from the Atlantic Ocean to the Lake of Nicaragua, as well as on that portion of the aforesaid lake comprised between fort San Carlos and river La Flor, together with a right to the joint navigation of the above mentioned river San Juan and of Lake Nicaragua. If, therefore, the line of the interoceanic canal should be on the south side of the river or in the bed thereof, a guaranty by us to Nicaragua of dominion over it would be in defiance of the claim of Costa Rica referred to. Under these circumstances, you will represent to the Government of Nicaragua that this Government cannot undertake to guaranty the sovereignty of the line of the canal to her, until the course which that work shall take with reference to the river San Juan and its terminus on the Pacific shall be ascertained, and until the differences between Nicaragua and Costa Rica, respecting their boundary shall be settled. You will suggest that it would be advisable for them to empower the Minister of Nicaragua here, to adjust the question of limits, and, you may add, that it is quite probable, if it should be adjusted under the auspices of both Great Britain and the United States, that adjustment might be made to embrace a settlement of any other question which Nicaragua may have with other powers respecting her territories on the Caribbean Sea. If, however, the Nicaraguan Government should refuse to authorize Mr. Marcoleta to negotiate upon this subject, you will then intimate to her authorities that the United States will not re-

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gard with indifference any attempt on her part to wrest by force from Costa Rica any territory of which the latter State may now be in peaceable possession.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c.

Mr. Webster to Mr. Kerr..

DEPARTMENT OF STATE, Washington, June 6, 1851.

SIR: If an inquiry should be addressed to you, in Nicaragua or elsewhere in Central America, as to whether the United States have recognized the Mosquito kingdom, or contemplate such a measure, you may answer decidedly in the negative. Any other course would be at variance, not only with the policy hitherto pursued by the United States in regard to the aboriginal inhabitants of the American hemisphere, but also with that of the European nations who made discoveries and planted colonies there.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c.

Mr. Webster to Señor de Marcoleta.

DEPARTMENT OF STATE, Washington, November 11, 1851.

THE Secretary of State of the United States has received the note of Mr. Marcoleta of the 30th ultimo, marked "Confidential." He can appreciate and sympathize with the anxiety of that gentleman and that of Mr. Molina for the adjustment of the differences between Nicaragua and Costa Rica. This Government strongly desires that they should be accommodated upon terms just to both parties, and upon a basis likely to be enduring. Without adverting to the nature or extent of the obstacles which have hitherto prevented that accommodation, it would seem to the undersigned, that the condition of public affairs in Central America, and especially in Nicaragua has, within a few months, become, and remains such, so far as this Department is informed, that it is extremely doubtful whether

any good or lasting results could at present be expected from the negotiations proposed by Mr. Marcoleta. It is probable that some of the despatches of the chargé d'affaires of the United States in Nicaragua to this Department have miscarried. It is certain, however, that at the latest dates from him he had not been received by the authorities at Leon in his official character. One cause for this may have been that a treaty is understood to have been concluded between Nicaragua, Honduras, and San Salvador, providing for a confederacy between those States, with the title of "National Representation of Central America." But neither Mr. Marcoleta nor any other person has presented credentials to this Government as the agent of that confederacy, and this Department is not aware that the confederacy is actually in operation. If, however, such should be the fact, it will at once occur to Mr. Marcoleta that any step which he might take, as the diplomatic representative of Nicaragua only, would neither be binding upon her nor respectful to her confederates, so long as she acknowledged the validity of the compact which unites them.

The undersigned avails himself of this occasion to offer to Mr. Marcoleta renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

TO SEÑOR DON JOSÉ DE MARCOLETA, &c., &c., &c.

Mr. Webster to Mr. Kerr.

DEPARTMENT OF STATE, Washington, November 20, 1851.

SIR: Your despatches Nos. 3 and 4 have been received. As those numbered one and two have not reached the Department, we have not been able correctly to understand the position of the contending parties in Nicaragua. You will accordingly, at your earliest convenience, transmit duplicates of them.

Mr. J. L. White, the agent of the Atlantic-Pacific Ship Canal Company, has recently visited this city, and from the oral representations which he has made the Department is inclined to believe that the modifications of the charter company which he recently obtained in Nicaragua, were granted by competent authority and upon just considerations. The

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large expenditures of money which the company had already made and the magnitude of the interests, both public and private, at stake, seem to have admitted of no delay in seeking and obtaining those modifications. If, therefore, their lawfulness should be disputed, you will state the opinion of this Government upon the subject.

The transit by steamboats upon the river San Juan across Lake Nicaragua, and thence to San Juan del Sur, may fairly be considered as preliminary to the construction of the ship canal, and perhaps as indispensable to show the most eligible route; therefore Nicaragua will probably derive more immediate advantages from this transit than if the canal were to be begun at once without it, and as she has justly considered her future prosperity to be identified with the construction of the canal, it is to be hoped that the transit in the manner above mentioned will receive all reasonable encouragement and all necessary protection.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c.

Mr. Webster to the Secretary of the Navy.

DEPARTMENT OF STATE, Washington, March 17th, 1852.

SIR: The Port of San Juan de Nicaragua, or Greytown, being, as you are aware, the terminus on the Atlantic of the line of transit which has been, for some time past, in operation between New York and San Francisco, is frequently thronged with passengers between those places. It has, also, received of late a considerable increase of settlers, many, if not most of whom, are citizens of the United States. Offences against property and persons must necessarily be of frequent occurrence in that place, and their frequency and enormity are likely to increase in proportion to the absence of authority competent to prevent and punish them. The power in existence at Greytown is claimed to be derived from the Mosquito Indians, who have not been, and will not be, acknowledged as an independent nation by this Government. Negotiations are, however,

in progress for the removal of all obstacles to the jurisdiction of the Republic of Nicaragua over that port. Meanwhile a temporary recognition of the existing authority of the place, sufficient to countenance any well intended endeavors, on its part, to preserve the public peace, and punish wrong-doers, would not be inconsistent with the policy and honor of the United States. Under these circumstances, the President has directed me to make known to you his desire, that instructions be at once given to the commanding officer of the United States Home Squadron, or to the officer in command of any United States vessel of war now at Greytown, in conjunction with Her Britannic Majesty's Admiral, or such other officer commanding Her Britannic Majesty's vessels belonging to the squadron under his command, to see that all reasonable municipal and other regulations in force there are respected by the vessels and citizens of the United States resorting thither, and, also, should any of those regulations appear to be manifestly unreasonable in their nature, and improperly enforced, to give notice thereof, in concert with Her Britannic Majesty's Admiral, or other officer as above, to the acting authorities, and procure them to be modified accordingly. The President likewise desires that, if any tonnage duties or port charges levied on vessels there, should be found to be exorbitant in amount, or discriminating in their nature, or when collected notoriously applied to improper purposes, you will instruct one or the other of those officers to protest in accordance with Her Britannic Majesty's Admiral, or other officer, against them, and to do all that may be proper towards having the abuses corrected. In view of the success of high public objects, it is important that these orders should be executed with moderation, temper, and firmness, and the President does not doubt that they will be thus carried out. Instructions similar to the above will be addressed by Her Britannic Majesty's Government to the Admiral commanding on the West Indian Station.

I have the honor to be, Sir, your obedient servant,

DANIEL WEBSTER.

HONORABLE WILLIAM A. GRAHAM, *Secretary of the Navy.*

Mr. Webster to Señor Molina.

DEPARTMENT OF STATE, Washington, April 8, 1852.

DEAR SIR: I have received your note of the 6th instant, marked "Confidential."

The President will be exceedingly unwilling to be obliged to conclude the pending arrangement without the co-operation and consent of Costa Rica. But time presses, and it is necessary to bring this business to an end. Nicaragua granted the sections of land to the canal company, to be located on either side of the San Juan. If she now consents to surrender all the territory on the south side of that river to Costa Rica, it seems quite reasonable that an arrangement should be made between the two Governments, such as shall meet the convenience and fulfil the just expectations of the canal company.

It is most earnestly to be desired, that upon further consideration you should devise a plan by which we can get over the present difficulty without the delay which would necessarily be incurred by waiting for further instructions. I commend this subject with renewed earnestness to your attention.

I offer you a renewed assurance of my very high consideration.

DANIEL WEBSTER.

SEÑOR DON FELIPE MOLINA, &C., &C., &C.

Mr. Webster to Señor Molina.

DEPARTMENT OF STATE, Washington, April 15, 1852.

SIR: I have the honor to acknowledge the receipt of your note of the 9th instant, in which you agree to stipulate, on behalf of your Government, to allow the Atlantic-Pacific Ship Canal Company to locate two of the sections of land granted to them by the Nicaraguan Government on the Costa Rican side of the San Juan River, in consideration of one hundred thousand dollars to be paid by Nicaragua to Costa Rica out of the revenues to be received by the former from that company. Your offer is also made subject to other conditions.

It is to be regretted that the expectations of your Government should be so high in regard to its differences with the

Nicaraguan Government. I had indulged the hope that the proposition contained in my note of the 8th instant would, under the circumstances, have been considered by you so moderate and reasonable that you would not, by rejecting it, lose the opportunity which it afforded Costa Rica to avail herself of the good offices of the United States and Great Britain towards accommodating the disputes between her and Nicaragua. Inasmuch, however, as you have otherwise decided, Mr. Crampton and myself will proceed to arrange the points at issue between our two Governments in regard to the Mosquito shore, and to transmit directly to the Nicaraguan Government, whose diplomatic agent here it is understood still remains without instructions, information of these arrangements, with a distinct statement of our joint opinions of the interests and duty of that Government. As you are the recognized minister of Costa Rica to this Government, it would be improper for us to address ourselves directly to that of Costa Rica, as such a proceeding would be a departure from diplomatic usage. I have to say, however, that a copy of the paper which we propose to communicate to the Nicaraguan Government will be placed in your hands.

I avail myself of this occasion, Sir, to offer to you a renewed assurance of my very distinguished consideration.

DANIEL WEBSTER.

SEÑOR DON FELIPE MOLINA, &C., &C., &C.

Mr. Webster to Mr. Walsh.

DEPARTMENT OF STATE, Washington, April 29, 1852.

SIR: The disputes between the republics of Costa Rica and Nicaragua, and between the latter and the Mosquito Indians, in regard to the boundary between their respective territories, have threatened to be so serious an obstacle to the commencement of the interoceanic canal by the way of the San Juan River and Lake Nicaragua, that the Governments of the United States and Great Britain have deemed themselves warranted in offering their good offices for the purpose of adjusting them. For this purpose Mr. Crampton, the British minister here, and myself have drawn up and signed the paper, a copy of

which you will herewith receive. This paper consists of a preamble setting forth the motives for the settlement of the disputes, seven articles of a basis for that settlement, and a conclusion adverting to the alternative which Great Britain and the United States will deem themselves justified in adopting, should their recommendation to Costa Rica and Nicaragua not be substantially adopted by them. Until recently hopes were entertained that Mr. Molina, the minister of Costa Rica here, would have joined in the instrument. The accompanying copy of a correspondence between this Department and him will, however, apprise you that as he has been unwilling to permit the canal company to locate certain sections of land granted them by Nicaragua on the right bank of the San Juan River, it has been deemed advisable not to yield to him on this point, and we have signed the paper without him. A motive for this on my part was an apprehension that he might ultimately object to some of the terms in which the boundary between Costa Rica and Nicaragua is described. As it is presumed that his scruples were in obedience to instructions from his Government, it is deemed expedient that a person on the part of this Government should proceed to San José, the capital of Costa Rica, for the purpose of inducing that Government to accede to the recommendation embodied in the paper adverted to. You have accordingly been selected for the occasion. A letter introducing you to the minister for foreign affairs of Costa Rica is herewith enclosed. On reaching San José, you will lose no time in presenting this and in making known the object of your visit. For this purpose, you will present to the minister the document executed by Mr. Crampton and myself, and will request that it may be taken into immediate consideration. In order that you may be prepared to meet any objections to its adoption by that Government, it is proper that you should be apprised of the full extent of its claims in respect to Nicaragua. It is understood that Costa Rica asserts that her boundary begins at the mouth of the San Juan, at its confluence with the sea, and extends therein to its source in Lake Nicaragua, and thence to a point on that lake nearest the mouth of the river La Flor, on the Pacific; and thence by a direct line to the mouth of that river. Nicaragua, on the other hand, con-

tends that Costa Rica has no right to claim the region on the south bank of the San Juan or the district of Guanacaste. From the attention which I have been able to bestow upon the subject, I incline to the opinion that the claim of Costa Rica to the south bank of the San Juan is good as far as the mouth of Sarapiquí River, but that her pretensions to the Guanacaste district will not bear a strict and impartial investigation. By the proposition we make to her, therefore, she would apparently lose, in the first place, the delta between the San Juan and the Colorado. This, however, would only be an apparent loss, when it is considered that the Colorado may be deemed a branch of the San Juan, and as it discharges a much larger volume of water than the branch which empties into the sea at Greytown, it may be said to be the main branch of the stream. When, also, it is considered that the delta referred to is uninhabitable and otherwise valueless, Costa Rica cannot justly be said to make any material sacrifice in adopting the Colorado as her boundary. It is not improbable that she has hitherto been influenced in her pretensions by a reluctance that Nicaragua should have exclusive control of the canal, and by an impression that, if the Costa Rican boundary were to extend to the south bank of the San Juan and were to embrace the Guanacaste district, she might have the canal within her jurisdiction, especially as the port of Salinas, on the Pacific, which has sometimes been spoken of as the best terminus for the work, would then be hers. The Atlantic and Pacific Ship Canal Company have, however, made a thorough survey of the region between Lake Nicaragua and the Pacific, and have ascertained that not only the most practicable, but the only practicable, course for the canal will be from a point on that lake, within the acknowledged territory of Nicaragua, to Brito on the Pacific, also in her territory. Inasmuch, therefore, as there cannot be two canals in that quarter, and as capitalists will prefer the cheapest and most eligible route, Costa Rica cannot, in any event, expect to have the canal within her territory. As it is probable, however, that the San Juan itself will, in a part of its course at least, be used as the canal, by means of locks and dams, it is indispensable that the canal company should have exclusive control over the waters of that river for the purposes

of the canal. If, therefore, Costa Rica should acquire, by so good a title as the guaranty of the United States and Great Britain, the rich and extensive region of Guanacaste at so small apparent a sacrifice, it is difficult to imagine why her Government could reasonably hesitate to adopt our recommendation.

But, it may be asked, why should Nicaragua have the exclusive right to navigation by steam on the San Juan and the lake? To this it may be answered, that steam navigation was first introduced there under the auspices of Nicaragua, in the belief that she had exclusive jurisdiction over the river and lake; that the company, to whom she has granted the privilege, accepted it under this impression, and have invested a large capital in carrying their grant into effect. If Costa Rica should make a similar grant to another company, it would probably result in material loss, if not ruin, to that holding under Nicaragua, and indeed to both, and would ultimately lead to ceaseless bickering and perhaps arrest all steamboat navigation in that quarter. The competition between the Nicaraguan route, to and from the Pacific, and those by the way of Panama and Tehuantepec, when the latter shall be open, will make it for the interest of the Nicaragua company so to reduce their rates for passage and freight that none of the usual objections to a monopoly can be urged against them.

If, however, the Costa Rica authorities should not acknowledge the reasonableness of the plan of accommodation proposed, and should persist in asserting all their pretensions against Nicaragua, you will say to them that this will not prevent the United States from entering into a convention with Great Britain to protect both the transit and the ship canal company. Should such a convention go into effect, it would, if necessary, be the right and duty of both parties to it to use other means than persuasion to induce Costa Rica to abstain from trenching on the privileges or interfering with the operations of either of those companies.

It is the President's wish, that if the proposition of which you are the bearer be acceptable to that Government, their assent to it may be given in a formal manner by both the legislature and president of Costa Rica, so that no further reference to that country may be necessary. Mr. Molina might then be

instructed and empowered to sign a quadripartite treaty, and might, at the same time, be furnished with a ratification of such a treaty, to be exchanged here for the ratifications of the other parties. It is highly desirable that that Government should dispose of the subject, so that you may return hither in season to allow the treaty to be acted upon by the Senate of the United States at its present session.

You will proceed to San Juan de Nicaragua, and from thence up the San Juan River to its confluence with the Sarapiquí, and from thence to San José by land. When you shall have concluded your business at San José, you may return by the way of Nicaragua, in order that you may bring with you any despatches which Mr. Kerr, the chargé d'affaires of the United States to Nicaragua, may have occasion to send to the Department.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

ROBERT M. WALSH, Esq., &c., &c., &c.

Mr. Webster to Mr. Lawrence.

DEPARTMENT OF STATE, Washington, May 14, 1852.

SIR: Your despatches, to No. 176, inclusive, have been received.

On the 30th ultimo, as you may have been informed through another channel, Mr. Crampton and myself agreed upon and signed a proposition to Costa Rica and Nicaragua for the adjustment of their disputes upon the subject of boundary, and also for the adjustment of the controversy between Great Britain and Nicaragua in regard to the territory claimed by the Mosquito Indians. If this proposition should be accepted by those republics, a quadripartite treaty will probably be entered into by them, Great Britain, and the United States. A principal impediment to the commencement or successful progress of the ship canal through Nicaragua will then have been removed.

Considering that the United States and Great Britain have jointly agreed to protect such a canal, and in consequence of their possessions on the coast of the Pacific, and other obvious

causes, have a similar interest in its success, it seems desirable that the capital required for its construction should be advanced by the citizens and subjects of both countries. If, however, English capitalists should not be disposed to invest their funds in the enterprise, the means for its construction can easily be obtained in this country whenever our citizens shall be satisfied of its practicability, and that it would yield a regular and fair profit. Convinced of the great importance of the work, the Government of the United States would always be disposed to aid in the prosecution thereof to the full extent of its constitutional power. It is not likely, however, that the canal company will need any such assistance from this Government.

The practicability of the canal may now be considered as certain. The survey under Colonel Childs, whose high professional and personal character are probably known to you, was some time since completed. He recently visited this city, bringing with him maps, plans, and estimates for the work. By direction of the President these were laid before Colonels Abert and Turnbull, of the United States Topographical Engineers, for examination and report. The report of these officers has confirmed the accuracy of the estimates of Colonel Childs. No doubt is entertained that they will receive a similar confirmation from any military or civil engineers in England to whom they may be submitted.

Your despatches relative to the appointment of an engineer on the part of this Government to accompany or join a British Government engineer for the purpose of surveying the route for a canal between Port Escoces and the Gulf of San Miguel were duly communicated to the Department of War, but no answer upon the subject has been received. It may be deemed doubtful, however, whether that Department can, under existing circumstances, spare an engineer for such service abroad. Our corps of engineers is very small, and there are professional duties at home much more than enough to employ the whole time of all of them.

If you think proper, you may either read this despatch to Lord Malmesbury, or leave a copy of it with him.

I am, etc.,

DAN'L WEBSTER.

Basis of a Convention for the settlement of the differences between Nicaragua and Costa Rica proposed by the United States and Great Britain.

WASHINGTON, April 30, 1852.

THE undersigned, Daniel Webster, Secretary of State of the United States, and John F. Crampton, Envoy Extraordinary and Minister Plenipotentiary of her Britannic Majesty, having taken into consideration the state of the relations between the republics of Costa Rica and Nicaragua in respect to the boundaries between those republics, and between the republic of Nicaragua and the territory claimed by the Mosquito Indians, and being mutually desirous that all pending differences respecting those questions should be amicably, honorably, and definitely adjusted, do, in behalf of their respective Governments, earnestly recommend to the respective Governments of the republics of Nicaragua and Costa Rica an accommodation and settlement of these differences upon the following basis.

ARTICLE 1. The Mosquito Indians may reserve to themselves, out of the territory heretofore claimed or occupied by them on the eastern coast of Central America, a district of country, and the jurisdiction over the same to be bounded as follows, namely : Beginning on the shore of the Caribbean Sea at the mouth of the river Rama, which is (according to Bailey's map of Central America, published in London, November, 1855) $11^{\circ} 34'$ north latitude and $83^{\circ} 46'$ west longitude ; running thence due west to the meridian of $84^{\circ} 30'$ west longitude from Greenwich ; thence due north on said meridian to the river Segovia Fantasma or Wauz ; thence down said river to the Caribbean Sea ; thence southerly along the shore of said sea to the place of beginning, and all the rest and remainder of the territory and lands lying southerly or westerly of said reservation, heretofore occupied or claimed by the said Mosquitos, including Greytown, they shall relinquish and cede to the republic of Nicaragua, together with all jurisdiction over the same, in consideration of the net receipts for a period of three years from all duties levied and collected at Greytown, at the rate of ten per cent ad valorem on all goods imported into the State ; the period of three years to commence on the day when Nicaragua shall formally take

possession of and enter into the occupancy of said town. And the said net receipts shall be payable quarterly, or every three months, to such agent or agents as may be appointed to receive them.

And the said republic of Nicaragua hereby agrees not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them.

It is also understood that any grant of land which may have been made by said Mosquitos since the 1st of January, 1848, in that part of the Mosquito territory hereby ceded to Nicaragua shall not be disturbed, provided the said grant shall not interfere with other legal grants made previously to that date by Spain, by the Central American confederation or by Nicaragua, or with the privileges or operations of the Atlantic Ship Canal Company or Accessory Transit Company, and shall not include territory desired by the Nicaraguan Government for forts, arsenals or other public buildings.

ARTICLE 2. It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangement between the State of Nicaragua and the Mosquito Indians, by which the latter may be definitely incorporated and united with the State of Nicaragua, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said State of Nicaragua. The municipal and public authority in the town of Greytown shall be held and exercised by the Government of Nicaragua, but said Government shall lay no duties of tonnage nor any duties of impost on goods imported into Greytown, intended for transit across the isthmus or for consumption in any other State than that of Nicaragua, except such tonnage duty as may be necessary for the preservation of the port and harbor and the erection and maintenance of necessary light-houses and beacons; and no duty for this or similar purposes shall exceed say twelve cents per ton on each vessel.

ARTICLE 3. The boundary between the republics of Nicaragua and Costa Rica shall begin on the south bank of the Colorado, at its confluence with the sea, at high water mark on said river; thence along said south bank, also at high water mark, to the

confluence of the Colorado with the river San Juan ; thence, at high water mark, along the south bank of the San Juan to its source on Lake Nicaragua ; thence, at high water mark, along the south and west shore of that lake to the point nearest the mouth of the river La Flor ; thence by a direct line drawn from that point to the mouth of the said river in the Pacific Ocean. It is understood, however, that Costa Rica retains the right, in common with Nicaragua to navigate said rivers and lake by sail vessels, barges, or vessels towed, but not by steam ; but this right is in nowise to interfere with the paramount right in Nicaragua or her grantees to appropriate the waters of said rivers and lake to a ship canal from ocean to ocean, or from the Caribbean Sea to said lake. It is also understood that the company entitled the American Atlantic and Pacific Ship Canal Company shall have the privilege of locating, on the south bank of the St. John River, four of the eight stations or sections of land referred to in the 27th article of the amended charter of said company, as ratified by the Government of Nicaragua on the 11th April, 1850. If, however, the said company should desire to locate more than the said four sections on the south side of the San Juan the Governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location.

ARTICLE 4. Neither the Government of Nicaragua nor the Government of Costa Rica shall be at liberty to erect or suffer to be erected any wharf, wall, embankment or other structure, or to do or suffer to be done any act or thing whatever in the harbor of Greytown, in any part of the Colorado or San Juan rivers, or on the shore of Lake Nicaragua, which shall obstruct the free operations of the ship canal or transit company, or hinder the passage of their boats in, along, and through the said harbor of Greytown and rivers Colorado or San Juan. And if, after a proper survey of the route for a ship canal between the two oceans, it shall be found that it would be preferable for that canal to pass in part along the southern bank of the river San Juan or the Colorado River, the Government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said canal.

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ARTICLE 5. Whereas it is stipulated by the second article of the convention between Great Britain and the United States of America, concluded at Washington on the nineteenth day of April, 1850, that vessels of the United States or Great Britain traversing the said canal, shall, in case of war between the contracting parties be exempt from blockade, detention, or capture by either of the belligerents; and that that provision should extend to such a distance from the two ends of the said canal as might thereafter be found expedient to establish: Now, for the purpose of establishing such distance, within which the vessels of either of said nations shall be exempt from blockade, detention, or capture by either of the belligerents, it is hereby declared that it shall extend to all waters within the distance of twenty-five nautical miles from the termination of said canal on the Pacific and on the Atlantic coasts.

ARTICLE 6. Whereas by the seventh article of the said convention it was among other things stipulated, that if any persons or company had already made, with any State through which the proposed ship canal might pass, "a contract for the construction of such a canal as that specified in said convention, to the stipulations of which contract neither of the contracting parties in that convention had any just cause to object; and the said persons or company had, moreover, made preparations and expended time, money, and trouble on the faith of such contract, it was thereby agreed that such persons or company should have a priority of claim over every other person, persons, or company, to the protection of the Governments of the United States and Great Britain, and should be allowed a year from the date of the exchange of ratifications of that convention for concluding their arrangements and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that, if at the expiration of the aforesaid period such persons or company should not be able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain should be free to afford their protection to any other persons or company that should be prepared to commence and proceed with the construction of the canal in question; and whereas at the time of the signature of the said convention a company, styled the

American Atlantic and Pacific Ship Canal Company, had, with the Government of the republic of Nicaragua, a contract for constructing a ship canal between the said oceans, but, for reasons deemed sufficient by the Governments of Great Britain and the United States, have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said Governments; and whereas no other company has claimed such protection on the same conditions, it is therefore agreed that the further time of one year from the exchange of the ratifications of this convention shall be allowed the said company to comply with the stipulation aforesaid.

ARTICLE 7. And whereas by another charter of the 11th April, 1850, to the American Atlantic and Pacific Ship Canal Company, the State of Nicaragua, with a view to facilitate the construction of that canal, has authorized the said company to separate from their contract of the 22d of September, 1849, the part relating to the navigation of the waters of Nicaragua by steam under the title of the Accessory Transit Company. And whereas the said Accessory Transit Company has for some time past been in full and successful operation, the Governments of Great Britain and of the United States hereby engage to extend their protection to the said Accessory Transit Company in the same manner and to the same extent as by the aforesaid convention, of the 19th April, 1850, and by this convention the said protection is extended to the Atlantic and Pacific Ship Canal Company; but as the main object of the said convention between Great Britain and the United States of America was to provide for an interoceanic ship canal between the Atlantic and Pacific, and as that object is still deemed paramount to every other mode of transit, the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to construct said canal by the company which has undertaken to construct the same, or in case of their failure by any other person or company which may be authorized to construct the same, and every grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or company to construct, maintain, and use such canal. Finally, these propositions, so far as they respect the Govern-

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ments of Nicaragua and Costa Rica, are advisory and recommendatory, and the immediate attention of those Governments to their consideration is earnestly invoked. To insure a prompt decision Mr. Wyke, consul general of her Britannic Majesty, clothed with full power for that purpose, Mr. Kerr, chargé d'affaires of the United States to Nicaragua, and Mr. R. M. Walsh, appointed special agent on the part of the United States to the Government of Costa Rica, are authorized to communicate the arrangement proposed to those Governments respectively, and unless the aforesaid Governments of Nicaragua and Costa Rica shall promptly and without unnecessary loss of time concur in the general basis of this arrangement and adopt proper measures for carrying it into effect, then the Governments of Great Britain and the United States will immediately, as between themselves, jointly adopt such measures as they shall deem advisable to carry into full execution the convention between those Governments of the 19th April, 1850, and to accomplish the design therein contemplated of an inter-oceanic communication by canal from the Atlantic to the Pacific Ocean by the way of the river San Juan and the Lake Nicaragua.

DANL. WEBSTER.

JOHN F. CRAMPTON.

Mr. Webster to Mr. Kerr.

DEPARTMENT OF STATE, Washington, April 30, 1852.

SIR: The adjustment of the unsettled questions between the United States, Great Britain, Costa Rica and Nicaragua, in regard to the boundary between the two latter States, and between Nicaragua and the territory claimed by the Mosquito Indians, has for some time past been the subject of negotiations between Mr. Crampton, the British Minister, Mr. Molina, the Minister of Costa Rica, and myself. Mr. Marcoleta, the Minister of Nicaragua, has not been invited or admitted to take part in them. This arose from the fact that at the time they were begun, and until they were nearly concluded, we were not informed that you had been received by the Nicaraguan Government, and when we were informed by Mr. Marcoleta's note of

the 14th instant that you had been so received, there was no communication from him from which it could be inferred that his instructions would allow him to join in the negotiation upon any acceptable basis. Hopes were for some time entertained that Mr. Molina would unite with us in a basis deemed reasonable by us and which we could recommend to those Governments. You will see, however, from the accompanying correspondence between the Department and him that these hopes were disappointed. Mr. Crampton and myself accordingly signed alone the paper, a copy of which is herewith enclosed. You will lose no time in laying the same before the Nicaraguan Government, and asking its immediate and serious consideration thereof. You will see that it proposes to restore to Nicaragua the port of Greytown and the country north of it as far as the Rama River, for a certain consideration therein stipulated, to be paid by Nicaragua to the Mosquito Indians. To this proposition she will no doubt object by saying that the Mosquito Indians have no right to the territory proposed to be ceded to her, and that it is unreasonable to expect her to pay for that which is already rightfully her own. Without, however, either raising or deciding the question as to her abstract right to the territory in question, the fact that she has not been in possession of it since the 1st of January, 1848, is notorious. Her authority over the territory, such as it was, was then forcibly expelled and has never been resumed, and whatever may have been the rights or the motives of the party who performed this act, they must be presumed to have been satisfactory to that party, which cannot be expected to stultify itself by voluntarily and without equivalent, surrendering that which it risked its reputation, and expended blood and treasure to obtain. By agreeing to pay the compensation proposed, Nicaragua would by no means be chargeable with inconsistency or dishonor, but would only yield to the stronger party — a frequent occurrence in the world's history. On the other hand, the compensation proposed is moderate in amount, and the time and manner of paying it will be made as accommodating to her as could reasonably be desired. She will then have full command of the port of Greytown on both sides of the river San Juan. She will also have the exclusive right to

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navigate that river by steam. It is true she has contended for a right to the territory on both banks of the San Juan and our proposition cedes the right bank to Costa Rica. The river, however, is obviously the best natural boundary between the two republics, and if, as is presumed to be the fact, Nicaragua, in claiming both banks, has been actuated by a desire to obtain exclusive control of the ship canal, this expectation would not be thwarted by ceding the right bank to Costa Rica. It is probable that the canal, for a great part if not the whole length of the river, will be constructed in the bed thereof by means of locks and dams. Should this prove to be the fact, the possession of the right bank by Costa Rica, pursuant to our proposition, would neither interfere with the construction or the operations of the canal, or with the control of it by Nicaragua.

We also propose to cede the district of Guanacaste to Costa Rica. As this is understood to be in accordance with the wishes of the inhabitants of that district, it is not likely that Nicaragua would find it a desirable possession, even if it were to be retained by her. Besides, one of her supposed motives for persisting in her claim to Guanacaste is the fact that it contains the port of Salinas, on the Pacific, which has sometimes been spoken of as a terminus of the ship canal. Inasmuch, however, as the recent survey by Colonel Childs, in the service of the Atlantic and Pacific Canal Company, has shown that the port of Brito, within the acknowledged territory of Nicaragua is the most eligible terminus for the canal, if, in claiming Guanacaste, Nicaragua has, to any extent, been actuated by the supposed importance of Salinas, that motive is unfounded.

It is not improbable that some persons of influence and authority in that republic may have been advised, that if the Nicaraguan Government shall reject the plan of settlement proposed by us, a change of administration in this country will result in a change of policy, and that Greytown will be forcibly restored to her should this become necessary. Allowing that this information may be correct, it is obvious that even if Nicaragua were to regain possession of Greytown by this means, her own great object and the principal object of both Great Britain and the United States in interesting themselves in her

affairs, namely, the construction of the ship canal, would, probably, be indefinitely postponed; and even the transit by steamboats over her waters, from which it is understood she now enjoys both direct and incidental advantages, would be put an end to.

It is to be hoped, therefore, that moderate counsels will prevail there, and that the opportunity now afforded her, (which will probably be the last one,) of peaceably settling the complicated questions which have been so long pending, will not be inconsiderately rejected. It is certain that the ship canal can never be even begun until every discernible cause for internal convulsion or foreign war in that quarter shall have been removed. If, however, the adjustment proposed should be accepted by her, to the confidence in the practicability of the work, which the recent survey is calculated to inspire capitalists, will be added the more important confidence, that their funds invested in its construction will not be subjected to risks arising from the causes adverted to.

It is desirable that the decision of Nicaragua should be prompt, so that it may be known here in season for a quadripartite treaty to be signed here, and submitted to the United States Senate at its present session. In order to save time, and prevent the necessity of a further reference of the subject to that country, both the legislature and president of the republic should act upon the subject, and ratify the quadripartite treaty which Mr. Marcoleta may then be instructed to exchange.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, ESQ., &C., &C., &C.

Mr. Webster to President Fillmore.

DEPARTMENT OF STATE, Washington City, Aug. 12th, 1852.

TO THE PRESIDENT: Two messages have already been sent by you to the Senate, respecting the proposed Convention between the United States and Great Britain in regard to the affairs of Central America, and I have thought it my duty to submit to you, a general report of the proceedings of the Government of the United States upon that subject.

All know, that a Convention between the United States and

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Her Britannic Majesty for "facilitating and protecting the construction of a ship canal between the Atlantic and Pacific oceans, and for other purposes" was concluded at Washington on the 19th of April, 1850, and approved by the Senate on the 23d of May in the same year. The fourth article of that Convention is in the following words:—

"The contracting parties will use whatever influence they respectively exercise with any State, States, or Governments possessing or claiming to possess any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or Governments to facilitate the construction of the said canal by every means in their power. And furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may most be expedient, in order to procure the establishment of two free ports, one at each end of the said canal."

Before the conclusion of this Convention at Washington, viz. on the 3d day of September, 1849, a treaty was negotiated and signed in the city of Leon, on the part of the United States by E. G. Squier, *chargé d'affaires* to the Central American States, and Señor Don Hermanequildo Zepeda on behalf of the Republic of Nicaragua, which was submitted to the Senate, on the 15th of March, 1850. This Treaty has never received the decision of the Senate.

On the 17th of June, 1850, Mr. Clayton, then Secretary of State, wrote to the Government of Nicaragua, suggesting the necessity of alterations in the Treaty negotiated by Mr. Squier in order to bring it into harmony with the provisions of the Convention, between the United States and England, and requesting that some person might be appointed on the part of Nicaragua, to agree to such alterations; and it was understood that a suggestion was made to Members of the Committee on Foreign Relations of the Senate at the same time, that it might be well to defer the consideration of the Nicaragua Treaty, and that the same suggestion was repeated after the accession of the present President.

On the 3d of October, 1850, the Secretary of State for Nicaragua informed the Government of the United States, that

Mr. Marcoleta, then in England, had been appointed Envoy Extraordinary and Minister Plenipotentiary to the United States by the Government of Nicaragua, for the purposes stated in Mr. Clayton's letter. On the 20th January, 1851, the Secretary of State of the United States wrote to the Government of Nicaragua, stating, that Mr. Marcoleta had not arrived, and it was thought not to be probable he would accept the appointment. Mr. Marcoleta, however, did accept his appointment, came to Washington and was received by the President, as Minister from Nicaragua, on the 22d of February, 1851.

Mr. Molina was received as Minister of Costa Rica on the 24th of March of the same year. In a note to Mr. Lawrence, the Minister of the United States in England, of the 5th of August, 1850, Mr. Molina, then in London, stated that Costa Rica was willing to submit the question of her rights, over all the territories in dispute between her and Nicaragua, to the combined mediation of the United States and Great Britain: Provided, that Nicaragua should have previously placed herself under a similar obligation. In the 6th article of the Convention with England, of the 19th of April, 1850, it is declared, that "the contracting parties likewise agree that each shall enter into treaty stipulations, with such of the Central American States as they may deem advisable for the purpose of more effectually carrying out the great design of this Convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree, that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiations of such treaty stipulations, and should any difficulties arise as to the right or property over the territory through which the said canal shall pass between the States or Governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties."

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Mr. Kerr, United States chargé d'affaires in Nicaragua, was directed to request that Government to instruct Mr. Marcoleta to adjust, if it were found to be practicable, the dispute between her and Costa Rica, and to bring other pending questions to a final settlement. On Mr. Kerr's arrival in Nicaragua he found that country in a state of revolution, and that previous to that occurrence she had merged her sovereignty, so far as respected foreign relations, in a confederacy with the States of San Salvador and Honduras. Many months elapsed before Mr. Kerr was received by the Nicaraguan Government, and his reception did not take place until after Nicaragua had resumed her separate independence. No intelligence of this event had reached Washington at the time when the negotiations for the proposition to Costa Rica and Nicaragua were entered upon.

Nicaragua has at various times through her President, her Minister for Foreign Affairs, and her Minister at Washington, solicited the interposition of the United States in her behalf. Since the renewal of her independence and her resumption of separate authority in regard to foreign relations, Mr. Marcoleta has resumed his functions as Minister from that Republic. He has been made fully acquainted with all the propositions submitted to Nicaragua and Costa Rica by the Governments of the United States and England, and has made no remonstrance or protest against any of them.

An interview between the Secretary of State of the United States, Sir Henry L. Bulwer, Mr. Marcoleta, and Mr. Molina, had taken place in June, 1851, for the purpose of arranging all the points in controversy, but this interview came to no definite result, in consequence of an allegation on the part of Mr. Marcoleta, that his instructions did not warrant him in acceding to the basis proposed by the other parties. He has not informed this Department of the receipt by him of further instructions.

It has never been the purpose of the Government of the United States to interpose, directly or indirectly, in the affairs of the States of Central America, with a view to settle the controversies between them, by any influence whatever exercised by this Government without their request or free consent. The mediation and friendly offices of this Government have been solicited, and this request has been complied with and

nothing more. Not a step has been taken to coerce either of those Governments into any measure not satisfactory to itself. These republics are small, and in a great degree powerless, but we respect the national character and independence of each. And although it is to be deeply regretted, that, for national purposes, they are not united in some form of confederacy, yet, whilst things remain as they now are, we are to treat with each of them as a separate and independent state. It may be added that the anticipations adverted to in the instructions to Mr. Kerr, that it might not be advisable to construct the proposed ship canal wholly on the north bank of the San Juan River, and therefore not expedient to guaranty to Nicaragua the sovereignty of the territory through which the canal must pass, have been fully realized by the survey of Colonel Childs, the engineer employed for the purpose by the canal company. You may recollect that according to the plans which he laid before you last spring, the canal will proceed in part only along the north bank of the river. Another part will occupy the bed of the river itself and the mouth of the Colorado and not that of the San Juan may ultimately be adopted as its terminus in the Caribbean Sea.

I think it proper to submit with this report the affidavits of the clerks and messengers in the Department disclaiming severally and respectively all knowledge of the manner in which the proposed Convention came before the public; my letter on the same subject to Mr. Crampton, Mr. Molina, and Mr. Marcoleta, and their respective answers, together with certain other papers referred to in this report; and in consequence of the irregular publication of the proposed Convention, the propriety of communicating the copy thereof hereto annexed is also suggested.

Respectfully submitted,

D. WEBSTER.

The Case of Dr. Jonas King

Mr. Webster to Mr. Marsh.

DEPARTMENT OF STATE, Washington, April 29, 1852.

SIR: Information having been received at this Department concerning events which have occurred at Athens, affecting the property, rights, and personal safety of Dr. Jonas King, it is deemed highly important, in the absence of a diplomatic agent of the United States in that city, at the Greek court, that you should proceed thither and ascertain the nature of the difficulties, and inquire into all the facts connected with them, and report the same to this Department. So far as the Department is informed, the facts are briefly these:

Dr. King was first sent by the American Board of Foreign Missions as a missionary to Palestine, where he remained about four years, and then returned to this country in 1827.

He subsequently went to Greece, not in connection with the board, but as one of the Philhellene agents to assist in relieving the Greeks from famine and distress, consequent upon their war of independence. In the year 1829 he was married in Tenos to a respectable Greek lady from Smyrna.

His connection with the American Board was renewed in the following year, and has continued to the present time. Dr. King was among the first to commence a residence in Athens after its abandonment by the Turks, and that has continued to be his place of abode.

While the city of Athens was in a state of ruin by the wars of the Greek revolution, Dr. King, with the consent, and by invitation of the Greek authorities, and in common with many citizens of other countries, became the purchaser of a piece of

ground, at that time little prized either by Turks or Greeks. In process of time, and especially since the capital of Greece has been permanently fixed there, the growth of the city towards the ground in question has occasioned it to become a most desirable part of the city of Athens.

Sixteen years ago Dr. King commenced collecting materials for the purpose of building upon his ground, but was prevented from doing so by the plans of the city, sanctioned by the Government of Greece. The ground has remained nearly in the same state as it was; neither can it be sold, divided, or alienated for the benefit of the owner; and no person, under existing circumstances, can or is allowed to purchase, so long as the incumbrance of "*non usus*" is laid upon it by the Government of Greece. Neither has the Government, during that length of time, sought or made any use of it, nor has the rightful owner been suffered to do with it as to him seemed right and proper.

The lot in question contains about (72,000) seventy-two thousand square feet, situated on a beautiful elevation, commanding a view of Mar's Hill and the Acropolis, and some of the principal antiquities of Athens, the Piræus, and Gulf of Salamis, on the south and southwest; Mount Parnassus and the Plain of Athens, on the west and north; and Lycamettus and Hymettus, on the east.

The value of the land is believed to be about (\$100,000) one hundred thousand dollars. Dr. King, both personally and through the aid of the United States consul, has endeavored to come to some understanding with the Greek Government on the subject, but without success.

The 12th article of the constitution of Greece declares that "no man shall be deprived of his property except for public necessity, suitably shown, when, and as the law directs. But under all circumstances the indemnification must be paid beforehand." Notwithstanding this positive declaration of the Greek constitution, Dr. King has received no indemnification, as the Department is informed, from the Greek Government.

In a despatch recently received from him, it appears that after the departure of Mr. Diomatari, the United States consul,

he was left in charge of the consulate, about a year since, and has been recognized by the Greek Government as the acting consul. It further appears that since he entered upon the discharge of his consular duties he has been tried on a charge of heterodox preaching, sentenced to fifteen days imprisonment, and then to be banished from Greece.

The Department is not informed precisely to what extent toleration is allowed in Greece, or how far the preaching of a religion other than that of a Greek church is permitted ; but it has good reason to believe that the Roman Catholics, Episcopalians, Lutherans, Jews, and Mussulmans, exercise the liberty, without restraint in Greece, of preaching and expounding their peculiar views.

If this be correct, the prosecution of Dr. King looks much like persecution. This Government, while it will not support its citizens in the violation of the local laws of the countries where they temporarily reside, will protect them, to the utmost of its power, in all just rights and privileges to which they may be entitled ; nor will it permit, on the part of the Greek Government, any violation of its treaty obligations.

The Department presumes there can be no doubt as to the citizenship of Dr. King, and his right to be protected by the Government of the United States. Mere residence abroad, without the *animus manendi*, has never been claimed to sever the ties which bind the citizen to his country.

The views of Chief Justice Williams, of Connecticut, in one of the documents herewith submitted, upon the subject of the citizenship of missionaries, coincide with those of the Department.

He remarks that "the merchant who seeks for gain, the soldier who fights the battles of other countries, and the sailor who spends his days in roving from shore to shore, all feel that they have a country which will acknowledge them as citizens. And it cannot be claimed that the missionary stands upon different grounds. There is nothing in his character, his pursuits, or his vocation, which renders him less worthy of the protection of his Government. The merchant seeks for gain for himself ; the soldier seeks for what he calls glory ; and the

sailor to indulge his roving disposition. The missionary, with untiring benevolence, looks not for his own good, but the good of others. He is the messenger of peace and the herald of salvation. He seeks not theirs but them. He looks not even for support to his new country, but draws his resources from his native land. He is, indeed, ambassador, not sent out by the Government as their representative, but as the representative of a great number of his fellow citizens, to communicate knowledge to the ignorant, and happiness to the miserable. To those from whom he derives his support, in his own land, is he accountable, and at their pleasure may be recalled. It is true he may be at a great distance from his native land, but not further than those who are in commercial pursuits. We see nothing therefore in his profession, nothing in his distance from home, nothing in his relationship to his country, which would place him upon different ground, as to his citizenship, from his commercial brethren.

“While, therefore, our missionaries, amidst their privations, are cheered with the knowledge, that they have the sympathy and the prayers of their Christian friends at home, and are recognized as brethren in Christ Jesus, they may rest assured that they remain fellow citizens with us, and have a right to the protection of a government whose distinguished characteristic it is to secure to all her citizens equal rights and equal privileges.”

And in connection with this subject, the following extract from a despatch, addressed under date of February 2, 1842, to one of your predecessors, shows the interest which has heretofore been taken in the protection of the American missionaries by the United States Government:

“It has been represented to this Department that the American missionaries, and other citizens of the United States not engaged in commercial pursuits, residing and travelling in the Ottoman dominions, do not receive from your legation that aid and protection to which, as citizens of the United States, they feel themselves entitled; and I have been directed by the President, who is profoundly interested in the matter, to call your immediate attention to the subject, and instruct you to omit no occasion where your influence in behalf of such persons

may become necessary or useful, to extend to them all proper succor and attentions of which they may stand in need, in the same manner that you would to other citizens of the United States, who, as merchants, visit or dwell in Turkey."

Such, in fine, are the main facts of the case, as now understood, which is presented for your investigation. You will please direct your particular attention to the papers accompanying this despatch, being the voluminous correspondence, relating to the subject, that has been carried on through a long series of years. You will ascertain what are the local laws in Greece, relating to the taking of private property for public uses, and the usual mode of indemnification; what losses, if any, Dr. King has been subjected to, and what just and equitable claim he may have upon the Greek Government, not only for a release of the injunction of *non usus*, or for the payment of the land taken by it, but also for indemnity for the losses to which he has thereby been subjected. You will also be careful to ascertain whether the late trial of Dr. King was for any offence, as alleged, against the laws of Greece; and whether it was conducted in all respects in a fair and legal mode; and also to what extent religious toleration is allowed and public preaching permitted, by law or usage, among those who do not belong to the established church; and also all other circumstances that may throw light on the subject, and enable the Department to give you further instructions.

Commodore Stringham has been ordered to convey you to Athens in one of the ships belonging to the Mediterranean squadron. He will probably reach Constantinople about the last of June. You will please leave the duties of the legation at Constantinople in charge of the first dragoman, whom you will authorize to exercise your functions during your absence as heretofore.

You will keep an account of your travelling expenses, whilst engaged in carrying out these instructions, and send your account, in the usual form, to the Department for settlement.

After transmitting your report, you will remain at Athens, or in its neighborhood, till you hear from the Department.

In the discharge of the duties with which you are now intrusted, the department places entire confidence in you

firmness and discretion. While you remain at Athens, the Navy Department will be requested to keep one or more of the vessels of the Mediterranean squadron in the neighborhood of that place, and subject to your order.

I am, Sir, &c.,

DANIEL WEBSTER.

HON. GEORGE P. MARSH,

Minister resident at Constantinople.

The Kossuth Banquet Speech

The Chevalier Hülsemann to Mr. Webster.

AUSTRIAN LEGATION, Washington, April 29, 1852.

MR. SECRETARY OF STATE: On my return from Havana, very lately, I found that the moment had arrived for carrying out the intentions of my Government in regard to my official relations with the Government of the United States. The Secretary of State has not thought proper to reply to the note, which I deemed it my duty to address him, under date of December 13th, relative to the reception and military honors which had been paid to Kossuth by the federal authorities.

The Secretary of State had induced me to hope that my interviews with him at the Department of State would no longer be commented upon in a style of derision, in certain newspapers of Baltimore and Philadelphia. These assurances, which had been given me in writing even, were immediately burlesqued in those very sheets, and have only led to fresh virulent attacks, which have been continued in a journal very largely circulated in New Orleans, and during my passage through that city I was made the subject of demonstrations of an extremely disagreeable character.

I thought it my duty then (the 21st of November last) to inform the President of these improprieties, so singularly countenanced; and thereupon the Secretary of State declared to me (on the 28th of November) that henceforth his intercourse with me must be exclusively in writing.

On the 7th of January last, the Secretary of State thought it fit to deliver publicly, and in the presence of Kossuth, a revolutionary address, in which he openly held out encouragement to Hungary, spurring her on to a new rebellion, and

formally proposed a toast for the speedy emancipation of that kingdom. This demonstration partook of so strange a character, it was so much at variance with the most common international courtesy, and the positive promises you had given me at the Department of State, that I thought it incumbent on me to apply at once to the highest authority of the republic, in order to ascertain whether the address in question embodied the sentiment of the Government of the United States.

I consider myself fortunate in being able to say that the Imperial Government, approving of the step I had taken, has fully appreciated the declaration the President thought proper to make to me, on the 12th of January last, in favor of maintaining friendly relations between Austria and the United States.

These verbal assurances have not been followed since by any action on the part of the Secretary of State in order to corroborate, officially, the declaration of the President, and to effect a satisfactory reconciliation.

After having specified with a great deal of caution the hostile proceedings of the Secretary of State, and after having demonstrated the false and disagreeable position which has been the result of such proceedings, I think it my duty to declare, from motives of propriety very palpable, that my Government could not allow me to remain here any longer, to continue an official intercourse with the principal promoters of the much to be lamented Kossuth episode.

I avail myself of this occasion to tender my respectful thanks to the President for his invariably obliging conduct towards me. M. August Belmont, Consul General of Austria in New York, will continue to perform his functions until further orders.

Please to accept, Mr. Secretary of State, the expression of my distinguished consideration.

HÜLSEMANN.

TO HON. DANIEL WEBSTER,
Secretary of State of the United States.

Mr. Webster to Mr. McCurdy.

DEPARTMENT OF STATE, Washington, June 8, 1852.

SIR: I transmit a copy of a note of the 29th April last, addressed to me by the Chevalier Hülsemann, announcing his intention of returning to Austria. This note reached me in Baltimore, I being then bound on a visit to Massachusetts, from which I have now lately returned. On receiving it, I directed Mr. Hunter to return the answer, a copy of which is also herewith enclosed.

It is obvious from the tenor of all his recent communications to this Department, that the Chevalier Hülsemann's experience in the diplomatic service of his Government has not instructed him accurately in the nature and limits of his official functions, and that, notwithstanding his long residence in this country, he is quite uninformed as to the character of our institutions and the responsibilities of public men in the United States, for their acts or their sentiments in a private capacity in regard to foreign powers.

The Chevalier Hülsemann came hither in 1838, as Secretary of Legation under the highly accomplished Baron de Maréshall, who was accredited as Envoy Extraordinary of His Imperial Majesty. Ever since the retirement of that gentleman he has acted as chargé d'affaires, but, so far as we are aware, without any regular commission from his Government. It is certain that he has never been accredited to this Department by the Austrian Minister for Foreign Affairs.

The Chevalier Hülsemann, it appears, has yet to learn that no foreign government or its representative can take just offence at anything which an officer of this Government may say in his private capacity. Official communications only are to be regarded as indicating the sentiments and views of the Government of the United States. If those communications are friendly in their character, the foreign government has no right or reason to infer that there is any insincerity in them, or to point to other matters as showing the real sentiments of the Government.

You will see from the Chevalier Hülsemann's note that he

made an appeal to the President against what he calls newspaper improprieties, and unofficial remarks of the head of this Department. The President, actuated by a benevolent desire to preserve unimpaired the friendly relations between the two Governments, waived ceremony and unofficially listened to his remarks. In pursuing this course, however, he by no means intended to allow the Chevalier Hülsemann to suppose that he was not well aware of his official position. The Chevalier Hülsemann should know that a chargé d'affaires, whether regularly commissioned or acting as such without commission, can hold official intercourse only with the Department of State. He has no right even to converse with the President on matters of business, and may consider it as a liberal courtesy that he is presented to him at all. I take it for granted that if you should imagine the Austrian Minister for Foreign Affairs had offended you, you would claim no right of appeal to the Emperor. Although usually we are not rigid in these matters, yet a marked disregard of ordinary forms implies disrespect to the Government itself.

I shall not, of course, notice the specific subjects of complaint of Chevalier Hülsemann. Whatever is personal to him must be allowed to pass without observation. You are at liberty to read this despatch to the Austrian Minister for Foreign Affairs.

I am, Sir, respectfully your obedient servant,

DANIEL WEBSTER.

C. J. McCURDY, &C., &C., *Vienna*.

The Tehuantepec Treaty

Mr. Webster to Mr. Hargous.

DEPARTMENT OF STATE, Washington, August 13, 1850.

SIR: Your letter of yesterday has been received. In reply I have to inform you, that in the event of any actual or threatened aggression by insurgent Mexican chieftains upon the rights of the holders of the Tehuantepec privilege, which the Mexican Government may itself be unable to repress and for which purpose it might invoke the aid of this Government pursuant to the fourth article of the treaty, there can be no doubt that the force of the United States might be directed against those chieftains whether they should hold commissions under that Government or otherwise. The invitation from that Government, in such a case, would be deemed tantamount to a waiver on its part of a strict construction of that part of the article of the treaty respecting which you inquire.

The seventh article is obviously a sequel to and is to be considered in connection with the sixth. The prohibition to any government or foreign corporation to acquire possession of the privilege is applicable, therefore, only to the case of a sale after confiscation, and would not affect the rights and interests of the corporation to which you refer. But even if it were otherwise, a fair construction would imply that the word "foreign" should mean, foreign to the parties to the treaty, and that therefore the restriction is not intended to embrace any United States or Mexican corporation.

If you deem these explanations sufficient, it would be advisable for you to accept the treaty as it stands. It can then be submitted to the Senate of the United States, who will propose such amendments as in their wisdom may seem necessary, both for the interest of the public and that of our citizens who are

concerned in the privilege with reference to the communication across the Isthmus of Tehuantepec. Those citizens may in any event confidently rely upon all the protection which the executive Government of the United States can constitutionally and lawfully extend to them. If their rights should be threatened or invaded, this Department will repeat to the Minister of the United States at Mexico the instruction which was addressed to Mr. Clifford under date the 30th April, 1849, by which he was directed to inform the Mexican Minister for Foreign Affairs that if citizens of the United States, tempted by the pledges held out by the Mexican Government in its decrees should have acquired rights under those decrees, any infringement of those rights would be regarded with just dissatisfaction by this Government. It is presumed that remonstrances of this tenor, coupled with the obligations of the Mexican Government under its treaties with the United States now in force, would be sufficient for your protection.

Should the event prove otherwise, however, it cannot be doubted that in such a case, in which the interests of individuals would be obviously subordinate to those of the public, any other means which might be necessary for your protection would be authorized and employed.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

To P. A. HARGOUS, Esq., *Washington.*

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, August 24, 1850.

SIR: Pursuant to the intimation given to you in the despatch from this Department, under date of the 17th instant, I now transmit a draft of a treaty upon the subject of the Tehuantepec enterprise. This draft is based mainly upon the treaty concluded by you upon the same subject. The principal differences are noted in the margin of the copy of your treaty, which is also herewith transmitted. It is proper that the amendments desired should be adverted to in the order in which they occur.

1. The object of this amendment to the preamble is to

obtain a distinct recognition of the fact, that the purpose of the treaty is to encourage the prosecution of the enterprise by a company composed of citizens of the United States, as contradistinguished from the citizens or subjects of any other nation. If the preamble were to express the word "company" only, it might lead to the inference that the parties to the treaty were indifferent as to the government to which the members of the company might owe allegiance. It cannot be doubted that the Mexican Government will absolve the Government of the United States from any obligation to consent to such an understanding, and will therefore accept the proposed amendment.

2. It is necessary that the stipulated protection should be extended to all persons within the limits mentioned in the grant. If it were to be limited to the grantees and the persons actually employed in the work of construction, it would be tantamount to a restriction of the grant itself in contradiction to its very terms, and might therefore render it nugatory. Without entering into particulars, it is obvious that many persons may be employed by the company for other purposes than the mere construction of the work. If, however, protection were to be withheld from them, and they were to be subjected to the annoyances of which there are so many examples in the history of our relations with Mexico, the work could not go on, or if completed would be useless for its intended purposes. It is hoped, therefore, that the Mexican Government will agree to an amendment which is so necessary to a just understanding of the obligation intended to be imposed by the article.

3. The second article as it stands would protect the work only. The amendment proposes to extend this protection to the interests involved therein, and to all persons within the limits of the territory defined by the grant. From what has already been said, this is obviously necessary for the sake of clearness.

4. If the force stipulated to be employed for the purpose of protection were to occupy the line of the work only, it is apparent that their services would be of no avail to protect the rights of the grantees. These rights would be susceptible of violation in many parts of the granted territory other than the mere line of the work. It is necessary, therefore, that the

protecting force should have liberty to operate in any part of that territory.

5. It is manifest that if the fourth article were to go into effect without the change proposed, it would invest the persons authorized to request the aid of the United States with entire discretion over the matter. This, certainly, besides conferring undue power on an individual who might be hostile to the enterprise, would render the whole treaty valueless. By proposing, therefore, to limit his discretion, and by requiring the United States to withdraw their assistance when this shall no longer be necessary, we ask nothing that is not reasonable. It is obvious, too, that Mexico might herself be called upon in vain to protect the persons and interests concerned when such protection might be necessary. If, therefore, she should fail to give the protection herself, and should also fail to ask the United States to bestow it, the grantees would be utterly unprotected. The amendment makes a provision for this contingency, which seems to me to be quite necessary, and would be sufficient for the object without trenching upon any of the rights essential for Mexico to reserve.

6. The purpose of the amendment to the sixth article is to render the existing laws only applicable to the case, and to deprive the Government, for the time being, of the arbitrary power of passing what might be called an *ex-post-facto* law, applicable to the confiscation in the particular case only. It cannot be doubted that the Government of the Mexican Republic will see the propriety of the amendment.

7. The amendment suggested to the seventh article has been occasioned by the fact that there is no Spanish word which corresponds in meaning to the English word "corporation," and that the Spanish word "corporacion" may be correctly translated by the English words "body politic."

8. If in time of war the neutrality were to extend to only a marine league from the termini of the communication or from the lines of coast of the territory comprised in the grant, vessels plying to and from those termini might be waylaid and captured, and the communication interrupted. It would, consequently, be advisable to extend the distance within which such captures would not be lawful, to — say sixty miles. If

the proposed insertion after the word "territories" were to be omitted, it might afford a pretext to molest both vessels and persons, contrary to the terms of the grant. Those words would consequently be necessary for the protection of the grantees.

It would also be advisable to have a stipulation exempting those intending to cross the isthmus from providing themselves with the passports required by the Mexican laws of all persons from abroad. The laws of New Granada upon the subject of passports are believed to be as stringent as those of Mexico. Our late treaty with that republic admits of a construction by which our citizens, crossing the Isthmus of Panama, were not exempted from the operation of those laws. This occasioned them great inconvenience. Upon a proper representation of the matter, however, to the Government of New Granada, by the chargé d'affaires of the United States to Bogotá, that Government promptly discontinued the exaction. It is hoped, therefore, that the Mexican Government will consent to a stipulation which will not allow a pretext for a similar exaction from citizens of the United States who may have occasion to cross the Isthmus of Tehuantepec.

9. In granting their protection to citizens of the United States who may undertake the work for facilitating the communication between the two oceans, across the Isthmus of Tehuantepec, this Government has a right to expect that those citizens will discharge their duty to the public by levying no more than reasonable tolls upon passengers and merchandise choosing that route. It would seem to be but reasonable that a treaty which requires such onerous obligations of this Government, should also secure to it a voice in regard to those tolls equal to that of the Mexican Government.

You will also notice that the word "privileges" has been substituted for "privilege" wherever the latter occurs in the original treaty. This change is rendered necessary by the fact that the Mexican decrees confer various privileges. If, therefore, the singular were to be used, it might afford a pretext for that Government to restrict the grantees to the enjoyment of one privilege only.

While the specified amendments are deemed indispensable for the object of the instrument, which is to protect the interests of

our citizens in the Tehuantepec enterprise from domestic violence and foreign aggression, they none of them appear to me to infringe upon the rights of sovereignty which Mexico holds in the territory, further than she has herself voluntarily relinquished the same by her decrees. The rights of that republic are explicitly acknowledged by the convention, and this Government has no disposition to violate or to disturb them. It is true that it may be difficult to persuade some of the leading characters in Mexican affairs of our sincerity upon this point. Still the task may not be insurmountable, if the subject should be presented to them in proper lights. It is accordingly commended to your utmost diligence and discretion.

It is believed that the region of country referred to in the decrees, though clearly within the limits of the Mexican Republic, has hitherto been little, if at all, under the control of the Government of that republic. This should be ascribed to the fact that there has been no occasion for such control. The inhabitants are mostly Indians, and, compared at least with the savages on the northern frontier of Mexico, peaceable in their disposition and pursuits.

When, however, foreigners with their property shall repair to that quarter, there is imminent danger that a change would be wrought in the character of those people, and that, stimulated by jealousy or avarice, they would seek to annoy and plunder them at every point where they might be defenceless. It cannot be expected that the Mexican Government will maintain on the isthmus a body of troops sufficient for the protection of persons and property. As little can it be expected that foreigners, with their capital, will go thither unless they shall feel as confident of protection at all times and in all places as if they were in their own country. The distance of Tehuantepec from the Mexican capital, and from every other part of the republic whence an effective force could be sent, combined with the difficulties of communication, would make it impracticable for that Government to render any assistance in a case of emergency; and in any other case the little apparent interest which the Government would have in discharging the duty of protection, would be sure to impair the efficiency of any it might ultimately give. If, however, the right of protection

should be conceded to this Government upon the terms now asked for, that communication between the two oceans might be depended upon, the region of country through which it passes would soon become settled with an industrious and thriving population, and Mexico would enjoy all the real benefits of sovereignty therein, while she would, at the same time, be relieved from one of the most onerous of its duties.

If these and other suggestions which will occur to you should fail to render the draft of a treaty now sent acceptable to that Government, you will inform the Minister of Foreign Affairs that the Government of the United States, relying upon the honor of Mexico as expressed in the decrees above adverted to, will take it for granted that the Mexican Government requires no treaty stipulations to induce it faithfully to comply with the engagements which those decrees contain. If, however, contrary to all just expectation, Mexico should violate those engagements, or should suffer them to be violated, this Government, under all the circumstances of the case, will be compelled to view that as a national grievance justifying and requiring it to demand amends for such violation, and for the future to take upon itself the protection of its citizens who are the holders of the grant.

The Mexican Government will bear in mind that, upon a certain memorable occasion, this Government intimated a desire to acquire for itself the right of way across the Isthmus of Tehuantepec, and was answered that the privileges with reference to that isthmus had some years previously been granted to an individual who had subsequently conveyed them to British subjects. The present holders are the assignees of those British subjects. Hence the validity of their title is conceived to have derived a peculiar sanction, which the honor of this Government demands should be maintained unimpaired. This obligation, however, does not derive its main force from the circumstance that the rights and interests of individuals alone are involved. The American public at large has a great and obvious interest in the Tehuantepec passage. When they shall understand that their Government has been baffled in an honorable effort to secure for them the benefits of that passage, by a reference to the previous grants, and that their countrymen, having become

proprietors of the privileges embraced by those grants, have, by the acts or omissions of the Mexican Government, been thwarted or annoyed in their exercise, they will expect that their own Government will take them under its protection, and this expectation will be fulfilled. We are willing that the means and the measure of the protection due to them by both governments shall be limited and defined by solemn treaty stipulations. If Mexico should reject our overtures for this purpose, we will extend our protection to them alone, according to our own sense of right and duty, and as future events may require. Perhaps if, upon a suitable occasion, you were to hint, in connection with this subject, that the money due to Mexico for the extension of the limits of our territory pursuant to the treaty of Guadalupe Hidalgo, has not yet been paid in full, and that contingencies might happen which would warrant this Government in withholding it, an impression might be produced favorable to the result of your negotiation.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO ROBERT P. LETCHER, ESQ., &C., &C., &C.

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, 4th December, 1850.

SIR: Your despatch No. 33, of the 22nd of October last, has been received. It is to be regretted that the draft of a treaty relative to the Tehuantepec communication which was transmitted to you with the instruction of the 24th of August last, should not have been entirely acceptable to the Mexican Government. Inasmuch, however, as you represent that they entertained decided and unsurmountable objections to the 4th and 11th Articles of that draft, it has been deemed expedient to confer with the holders of the grants with a view to instruct you to sign the treaty without insisting upon those articles. The result has been an acquiescence by them in this course of proceeding. If, therefore, you should not be able to obtain more favorable terms, you may embody in the treaty the 4th and 11th Articles as they originally stood in the instrument

signed by you on the 2nd of June last. You will, in general, endeavor to secure a treaty as favorable as practicable for the interests of the United States and of the holders of the grants. It is desirable, if possible, that the instrument should be received here in season for consideration by the Senate of the United States at its present session. Your proceedings will be governed accordingly.

The right of the Mexican Government to dispose according to its pleasure of the instalments which it may have received and may receive from this Government under the Treaty of Guadalupe Hidalgo cannot be disputed. We should certainly be glad if any pending claims of citizens of the United States, not intended to be provided for by that treaty, might be satisfied out of those instalments, but if that Government should think proper to make a different application of the money, the President, especially after an appropriation by Congress for its payment, cannot officially and lawfully adopt any other course than to execute the treaty according to its letter. You are aware that in August last, this Department entered into an arrangement with Messrs. Barings Brothers and Co., Howland and Aspinwall and Corcoran and Riggs for the payment of the instalments due to the Mexican Government on the 31st of May, 1851 and 1852, pursuant to the Treaty of Guadalupe Hidalgo. The arrangement referred to has accordingly anticipated and rendered unnecessary any negotiations upon the subject with the person alluded to in your despatch as a confidential agent of the Mexican Government.

Herewith you will receive a copy of a letter addressed to this Department by the Commissioners under the Treaty, setting forth the delinquencies of the Mexican Government in regard to the stipulations in the 15th Article relative to documents upon the subject of claims. Pursuant to the suggestions of the Commissioners, Mr. S. L. W. Barlow is sent as the bearer of this despatch and has been directed to assist you in any way he can in obtaining the papers for which requisitions have gone forward. It is to be hoped that by the time he reaches Mexico, the Mexican Government may be prepared to deliver them. You will send them by him on his return.

Mr. Buckingham Smith, the Secretary of your Legation, hav-

ing been disappointed in obtaining a passage in the United States Schooner Flirt from Charleston for Vera Cruz, has proceeded to the latter port by the way of Havana and has probably by this time reached the Mexican Capital. His presence there will enable you to avail yourself of your leave of absence with less detriment to the public interests. It is presumed, however, that you will not deem it advisable to start on your return home until you shall have brought to a close the negotiation upon the subject of the Tehuantepec Treaty.

I am, Sir, very respectfully, your obedient servant.

DANIEL WEBSTER.

TO ROBERT P. LETCHER, ESQ., &C., &C., &C.

Mr. Webster to Mr. Smith.

DEPARTMENT OF STATE, Washington, May 5, 1851.

SIR: I transmit the President's ratification of the Convention of the 25th of January last, upon the subject of the inter-oceanic communication across the Isthmus of Tehuantepec. As the Convention had not been submitted to the Mexican Congress at the date of your last despatches, and as that body will have adjourned before this communication can reach you, it is not deemed necessary to send you a power to exchange ratifications, in the event that the instrument should be approved by that body and ratified by the Mexican President. If, however, an extraordinary session of the Congress of that republic should be called, you will at once notify the Department thereof, so that proper measures may be taken towards completing the convention.

You will also receive herewith, a copy of a letter addressed to the Department by J. P. Benjamin, Esq., of New Orleans, from which it appears that the Mexican consul there has refused a clearance to a schooner bound to the Coatzacoalcos River with stores for the surveying party. As that party proceeded to the isthmus with the express consent of the Mexican Government, and cannot easily subsist there without supplies from home, or reach the United States on their return except by

direct communication, the act of Mr. Dabelstein referred to has created much surprise. It may be true that no port of entry has been established on the Coatzacoalcos River, and this objection would have been valid against the voyage of the schooner thither, if it had been for trading purposes. As its object, however, was merely to receive the surveying party, the technical objection of the consul to granting her a clearance, has an unfriendly aspect, but we will not believe without further information, that he had any special instructions upon the subject. All difficulty in regard to the intercourse between New Orleans and the isthmus would at once be removed, if the Mexican Government would establish ports of entry there, say one at Minotitlan on the Coatzacoalcos, and another at Salinas or Ventosa on the Pacific. That Government has recently recognized a consul of the United States at Tehuantepec, which is very near to Ventosa, and this act may be considered as implying that commerce between the United States and the isthmus may be rightfully carried on. There can be no doubt that if the ports referred to were made ports of entry, a trade across the isthmus highly advantageous to Mexico would at once arise.

If, however, that Government should not think proper to adopt this measure, you will inform the Minister for Foreign Affairs that it is trusted no further impediment will be interposed to the free communication between New Orleans and San Francisco and the surveying party on the isthmus.

DANIEL WEBSTER.

TO BUCKINGHAM SMITH, Esq., &c., &c., &c.

Convention between the United States of America and the Mexican Republic for the protection of a transit-way across the Isthmus of Tehuantepec.

THE United States of America and the republic of Mexico being convinced of the advantages which would accrue to both nations from the construction, by means of a company, of a transit-way across the Isthmus of Tehuantepec, for the purpose of facilitating the communication between the Atlantic and

Pacific oceans, have judged it proper to protect such a communication, and to this end the President of the United States of America has conferred full powers upon the Hon. Robert P. Letcher, accredited as Envoy Extraordinary and Minister Plenipotentiary of the United States to the Mexican Government, and the President of the republic of Mexico has fully authorized the citizen Manuel Gomez Pedraza, and the said plenipotentiaries, after exchanging their respective powers, which were found in good and due form, have agreed upon and signed the treaty of the 22d of June, 1850 ; but as the Government of the United States of America has returned the aforesaid treaty, with some modifications, the above plenipotentiaries have again met to take them into consideration, and, after examining the same, have agreed upon the following articles :

ART. 1. The person to whom the Government of Mexico may have granted, in its decree of the 1st of March, 1842, or may in future grant, according to the laws, privileges for constructing a road, railroad, or canal across the Isthmus of Tehuantepec, and all the persons employed in the work of construction, and their assistants, residing in the territory included within the limits defined by the grant itself, shall be protected, according to the laws of Mexico, in their persons and property, from the commencement of the work until its final completion, and during the period for which the privilege is granted.

ART. 2. Whensoever in any case the Government of Mexico may be unable to afford this protection, the United States of America shall lend their assistance, with military forces on sea and on land, in order to render it effective, and the object of the present treaty is to form a defensive alliance between the two nations, which may guarantee the protection of the work.

ART. 3. Either of the contracting parties may, in order to insure the aforesaid protection, employ such military or naval forces as it may judge necessary, under the restrictions and limitations hereinafter expressed ; and such forces, if they belong to the United States of America, shall be hospitably received in the ports of the isthmus, and shall be allowed to occupy the line of the work, or such part thereof as may be judged convenient.

ART. 4. The United States of America shall lend this assistance only in the case of their being required to do so by the Government of Mexico, either through the Minister of Relations of Mexico, or, in the event of communication between the two governments being interrupted, on the requisition of the Minister Plenipotentiary of Mexico to the Government of the United States of America, or of a commissioner of the Government of Mexico, specially authorized to this effect, and residing on the line of the work under construction. The assistance shall be given in the manner, and on the terms, and only for the period which the requiring party may designate. In no case can this assistance be employed against the functionaries of Mexico, as they will be compelled by their own Government to comply with their obligations.

ART. 5. In any difference which may arise between the Government of Mexico and the undertakers, either the present or the future, of the work, which may involve the loss of the right to the privilege, the complaining party shall draw up a statement of its pretensions and motives, and a similar statement shall be drawn up by the other party; and both statements shall be submitted to the decision of two arbiters who hold no diplomatic appointment or commission, and who reside in the Mexican territory. One of these arbiters shall be appointed by the holders of the privilege, and the other by the Government of Mexico; and these two, in case of disagreement, shall appoint a third, with the qualifications above required, who shall decide the controversy; and from the decision of these arbiters there shall be no appeal or recourse whatever. Of all other questions which may arise, the Mexican tribunals shall take cognizance.

ART. 6. If the decision of the arbiters or umpire (as the case may be) should involve the loss of the privilege, this privilege shall be sold at public auction, under such conditions as the laws of Mexico (in force at the time when the decision is pronounced upon the subject of seizure and forfeiture) may impose, notice thereof being given to the public at least three months before the sale, by publication in two of the principal newspapers of Mexico and of Washington. The sale shall be made by a commissioner appointed by the arbiters; the proceeds of the sale shall be appropriated to the grantees who lost

the privilege, after deducting all the expenses of the judgment and the sale. To the Mexican Government only the legal *alcabala* duty shall be paid at the city of Mexico. The commissioner shall give security for his conduct.

ART. 7. To no foreign government, corporation, or body politic can the privilege be sold, but the same can be acquired only by private individuals ; and the purchasers shall remain under obligation to prosecute the work until its completion, and to fulfil the conditions required by the Government of Mexico of the grantees whose rights have been alienated, or any other conditions which the same Government may legally impose.

ART. 8. The tolls which may be laid upon the officers, citizens, and property of the citizens of the United States of America shall be the same and no higher than those laid upon the officers, citizens, and property of the Mexican United States ; but all the productions of the soil or industry of Mexico shall enjoy the advantages of the passage for one-fifth less than those of the same class belonging to the United States of America.

ART. 9. It is agreed that the Government of Mexico shall have the entire faculty of granting the same privileges as herein stipulated for its advantage and that of the United States, but no greater privileges to any one or more of the commercial nations of the world, or to their citizens or subjects, if it should think proper to do so ; but these privileges being a compensation for the burdens of the guarantee, which the United States of America now take upon themselves, the said privileges shall not be granted by Mexico to any other nation until such a nation shall, by means of a treaty satisfactory to Mexico, bind itself to give the same guarantee as that given by the United States of America. It is the particular desire of both contracting parties that all the nations of the commercial world may enjoy the benefits of the road or canal upon complying with the terms of this article.

ART. 10. Both contracting governments engage to do, in conformity with the preceding stipulations of this treaty, all that may be in their power to maintain the neutrality of the route and ten leagues on each side as Mexican territory, not

only in time of peace but during war, even though one of the two nations should be a party to the war. They also engage that in case they should at any time be at war with each other, no vessel of either nation bound to the termini of the communication across the isthmus, or to any part of the line of the coast within the territory defined by the grant of 1st of March, 1842, shall be liable to capture at a less distance than sixty miles from said termini or coast, it being understood that the passage shall be free and secure in time of peace for the transportation of every species of effects and merchandise, arms, or munitions of war; but in time of war only for merchandise or effects which are not contraband of war, as these shall not be allowed to pass through it. Notwithstanding the neutrality of the communication and of the country to the distance of ten leagues on either side, Mexico shall preserve the full and entire sovereignty of the same communication and territory, with full observance, however, of the conditions imposed by the grant. Passports will not be required from persons crossing the isthmus, but the Government of Mexico shall exercise jurisdiction over the vessels and persons passing through it in the same manner as over those residing in its ports and territories. The salutes are to be made as customary in the ports.

ART. 11. If the holders of the privilege should refuse to enter into a satisfactory agreement for the regulation of the rates or prices of transportation within the space of twelve months, counted from the date of this convention, or they should not comply with their engagement, the guarantee of protection of the work here agreed upon shall be immediately withdrawn. The rates or prices cannot be fixed nor altered by the undertakers of the work without the approval of the Government of Mexico. Any alteration which may be made in the said rates or prices shall include both the contracting nations, according to the terms of the eighth article, preserving the discrimination in favor of Mexican productions; and in case such alteration be made, the Government of Mexico shall give notice thereof within sixty days afterwards to the Government of the United States of America.

ART. 12. The actual holder of the privilege shall give his consent to this treaty in writing, so that it may be deposited

in the archives of the Department of Relations of Mexico, or of the Mexican legation at Washington, within four months, of which notice shall be given to the Government of the United States of America; and until these shall have been done, the treaty shall not be submitted for approval to the Mexican Congress or to the Senate of the United States of America.

ART. 13. This treaty shall be ratified, and the ratifications shall be exchanged at Washington or at Mexico within nine months, and if this be not possible, within twelve months from its date.

ADDITIONAL ARTICLE. The terms fixed by the articles 11, 12, and 13 of the treaty of the 22d of June shall be counted from the date of the present one.

In testimony whereof, we, the plenipotentiaries of the United States of America and of the Mexican Republic, have hereto affixed our hands and seals.

Done in the city of Mexico, the twenty-fifth day of January, in the year of our Lord eighteen hundred and fifty-one, of the independence of the United States of America the seventy-fifth, and of that of the Mexican Republic the thirty-first.

R. P. LETCHER, [SEAL.]

MAN. G. PEDRAZA. [SEAL.]

Mr. Webster to Señor de la Rosa.

DEPARTMENT OF STATE, Washington, April 30, 1851.

THE undersigned, Secretary of State of the United States, has now the honor to reply at length to the note of Mr. de la Rosa, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, relative to the treaty for the protection of a transit-way across the Isthmus of Tehuantepec, signed at Mexico on the 25th January last.

The undersigned has already signified to Mr. de la Rosa his extreme surprise at some parts of the contents of that communication. In order to exhibit the subject clearly to the governments and citizens of both countries, and, indeed, to the whole world, which has so deep an interest in the question, it may be expedient here to present an exact historical view of the circumstances and occurrences connected with it.

All know that a communication from ocean to ocean across the isthmus in this direction, for many years has been a matter of anxious consideration. The Governments of the United States and of Mexico long ago expressed their conviction of the importance of this object. Indeed, no one can fail to see how exceedingly important this communication would be to the Government of Mexico. It proposes to give her a practical highway from sea to sea. It opens to her a communication, on the one side and the other, with the Eastern and with the Western world. It gives her access to the markets of all nations, and makes her, in short, a central point of the commerce of modern times. And under the provisions of the treaty now under consideration, all this is to be done without expense to herself. It is impossible that her enlightened Government should not be alive to all these advantages, and should not seize with avidity the first opportunity to avail herself of them in a manner consistent with her own sovereignty and independence. Her known wishes on this point are not of recent date. She entertained the purpose years ago, and regarded it then as an object to be accomplished only by mutual arrangement and negotiation. The late war between the two governments, unhappily precluded, for a time, all such arrangements, but at the moment of returning peace, the enterprise was revived, and the Government of the United States saw, with sincere pleasure, a new and brightened prospect, not only for the accomplishment of an end desired by all commercial nations, but of the highest degree of utility and importance to Mexico herself. It felt then, and has never ceased to feel a sincere desire that Mexico, as a neighboring government and a sister republic, should, at as early a day as practicable, avail herself of the obvious and vast benefits of this great work. In entering upon a negotiation for peace in September, 1847, the commissioner on the part of the United States offered to the commissioners on the part of the Mexican Republic, a draft of a treaty, the eighth article of which was in the following words :

“The Government of the United Mexican States hereby grant and guarantee forever to the Government and citizens of the United States, the right to transport across the Isthmus of Tehuantepec, from sea to sea, by any modes of communication

now existing, whether by land or water, free of any toll or charges whatever, all and any articles, the growth, produce, or manufacture of the United States, or of any foreign country belonging to the said Government or citizens; and also the right of free passage over the same to all citizens of the United States. And the Government of the United Mexican States, also grant and guarantee to the Government and citizens of the United States, the same right of passage for their merchandise and articles aforesaid, as well as for such citizens over any railroad or canal which may hereafter be constructed across the said isthmus by the Government of the United Mexican States, or by its authority, paying no more than fair and reasonable tolls for the same; and no higher tolls and charges shall be levied and collected upon any of the before-mentioned articles and merchandise belonging to the Government or citizens of the United States, or upon the persons of such citizens, for passing over the said railroad or canal, than shall be levied and collected upon like articles and merchandise belonging to the Government or citizens of Mexico, being the growth, produce, and manufacture of Mexico or of any foreign country, or upon the persons of such citizens. And none of the said articles whatever belonging to the Government or citizens of the United States, thus passing in transit over the said isthmus from sea to sea, either by the existing modes of communication, or over any railroad or canal which may hereafter be constructed, in either direction, for the purpose of being transported to any part of the United States, or of any foreign country, shall be liable to any import or export duty whatever. The two governments hereby engage, with as little delay as possible, mutually to agree upon such regulations as may be necessary to prevent fraud and smuggling, in consequence of the right of passage thus granted and perpetually guaranteed to the Government and citizens of the United States."

To this proposition the Mexican commissioners made the following answer:

"In the eighth article of your Excellency's draft the grant of a free passage across the Isthmus of Tehuantepec to the South Sea is sought in favor of the North American citizens. We

have orally explained to your Excellency, that some years since the Government of the republic granted to a private contractor a privilege with reference to this object, which was soon transferred, with the sanction of the same Government, to English subjects, of whose rights Mexico cannot dispose. Therefor your Excellency will not wonder that upon this point we do not accede to the desires of your Government." On this representation by the Government of Mexico, the United States reluctantly forebore at that time to press this subject further. They did so upon this solemn declaration and assurance of Mexico, that her hands were tied and her power of voluntary action surrendered. Mexico expressly declared, in this negotiation for peace, that as to the making of this inter-oceanic communication she had pledged herself definitely and absolutely to other parties; that is to say, she declared, solemnly, that she had transferred her rights to private contractors and could not resume them; and the United States yielded to this argument, so well founded in good faith and national honor. Finding this to be the state of things, and seeing that Mexico felt herself obliged to fulfil the stipulations which she had thus entered into, the commissioner of the United States abstained from further insisting on this point. All this is apparent from the history of the negotiation, and the words of the negotiators; and here it is to be observed that this contract and stipulation had been entered into by Mexico with Mr. Garay, by whom it was transferred to Messrs. Manning and Mackintosh, and by them to a citizen or citizens of the United States, by some of whom this identical privilege is now holden; so that the very object of the treaty now under consideration is to secure rights derived from Mexico by a public act, amounting to a pledge, which she cannot but fulfil. The treaty of peace was concluded without any stipulation whatever upon this subject, but its importance remained, and, indeed, became vastly enhanced to this Government by the events of the war and the conditions of peace. That war left an immense tract of the territory of Mexico, bounded on the Pacific, within the limits of the United States, and events and discoveries at that time altogether unexpected and unforeseen had given to that territory a new and remarkable interest. Citizens of the United States had gone

thither over the continent and around the Cape in vast numbers ; an integral part of this Union, shortly assuming the character of an independent State, was formed on the western margin of the continent ; and the Territories of Utah and New Mexico, being more interior, and the latter of them bordering on the already existing State of Texas, became also subject to this Government. But it was the intercourse, most especially, between the States of this Union on the Atlantic and on the Gulf, and California, that awakened with new life and an increased activity the enterprise of a connection between the two oceans, across the Isthmus of Tehuantepec. The conviction of the great importance of this gave rise to another attempt to accomplish the object by means of a treaty between the two republics ; and from the very first that object was sought to be obtained by giving security to private individuals willing to embark their capital in its accomplishment. The United States did not propose to make this communication at the expense of their own Government, nor does it appear that Mexico ever contemplated the idea of charging the expenses of such an undertaking upon her own finances. On the contrary, as has been already said, her first declaration to the United States was that she had contracted with a private individual upon the subject, and had granted to him indefeasible privileges relative thereto ; and Mexico, moreover, had expressly stated that this grant was assignable, and might be transferred by the first grantee to others, whether those others should be Mexicans or foreigners. Her words were by solemn enactment : “ The indemnifications which are accorded to the grantee and to those who may acquire his rights or any part thereof, are the following : ‘ Pledging the honor and public faith of the nation to maintain the projector, Don José de Garay, as well as any private individual or company succeeding or representing him, either *natives or foreigners*, in the undisturbed enjoyment of all the concessions granted.’ ” This is the very language of the decree of Mexico, and of her grant to Garay, and under the express terms of this grant, citizens of the United States now hold ; nay, more, the fact is notorious, that this grant had been assigned to certain English subjects, to wit : Messrs. Manning and Mackintosh, and that of this assignment the Mexican Gov-

ernment were perfectly cognizant, and in it they had entirely acquiesced. All this is indisputably clear from public documents and uncontradicted proofs. And the undersigned does not understand Mr. de la Rosa as denying or questioning any one of these facts. It soon became evident to those who held the grant by assignment under Garay, that its object was not likely to be accomplished without some security for their expenditures of capital, which could only be obtained by a treaty between the United States and Mexico; not that any justifiable doubt of the good faith of Mexico was entertained, but as the expenditure was expected to be large, entire confidence on the part of those who were to incur it seemed to be essential, and it was natural that when an undertaking was to be prosecuted, which promised so much advantage to both governments, both governments should hold over it the shield of their protection. In February, 1849, the English holders of the right assigned it to a citizen of the United States, and on the fifth of that month a petition was presented to the Congress of the United States on behalf of the assignee of the grant, by which this Government was informed of his rights; and by the letter of Messrs. Manning and Mackintosh to Mr. Lacunza, the Mexican Minister for Foreign Affairs, of the 25th of July of the same year, the Mexican Government was also officially informed that the grant had been transferred to a citizen of the United States.

After it had thus become perfectly known to the Government of Mexico, that a citizen of the United States had become possessed of this grant, with all its rights and privileges, Mexico entered into a negotiation with the United States, the main object of which was to induce the person holding the grant to go on with the undertaking under the plighted faith of both governments. And on the 2d of June, 1850, a treaty was accordingly signed in the city of Mexico between the governments of of that country and the United States, which contained the following articles:

“ARTICLE I. The person to whom the Government of Mexico may have granted or may in future grant the privilege to construct a road, railroad, or canal across the Isthmus of Tehuantepec, and those who may labor under their direction, shall be protected in their person and property from the

commencement of the work to its completion, and during the period for which the privilege is granted.

“ART. XI. If the holder of the privilege should refuse to enter into a satisfactory agreement for the regulation of the rates or prices of transportation within the space of twelve months, counted from the date of this convention, or they should not comply with their engagement, the guarantee of protection to the work here agreed upon shall be immediately withdrawn. The rates or prices cannot be fixed nor altered by the undertakers of the work, without the approval of the Government of Mexico. Any alterations which may be made in the said rates or prices shall include both the contracting nations, according to the terms of the eighth article, preserving the discrimination in favor of Mexican productions; and in case such alteration be made, the Government of Mexico shall give notice thereof within sixty days afterwards to the Government of the United States of America.

“ART. XII. The actual holder of the privilege shall give his consent to this treaty in writing, so that it may be deposited in the archives of the Department of Relations of Mexico, or of the Mexican legation at Washington, within four months, of which notice shall be given to the Government of the United States of America, and until this shall have been done, the treaty shall not be submitted for approval to the Mexican Congress or to the Senate of the United States of America.”

On being transmitted to the Government at Washington, it was thought that, notwithstanding these three important articles, other provisions, not contained in the treaty, were necessary for the perfect security of the grantees and those who were expected to hazard their capital in the undertaking. The treaty was therefore returned to Mexico for amendment, or for a new treaty to supply its place, and on the 25th day of January, in this year, such a new treaty was signed and sent hither for consideration and ratification. Now the 11th and 12th articles of this treaty are identical, and the first substantially so, with the same article in the treaty of the 2d of June, and this treaty contains other clauses of much importance, all intended and calculated to accomplish the great object in view, and to give

absolute assurance of protection to those who might become engaged in the enterprise. The language of the treaty is full, clear, precise, and incapable of being mistaken. This is a matter of grave importance, and must be fully considered. So far as the undersigned is able to understand the scope of Mr. de la Rosa's remarks, he would now seem to insist that the stipulations created by the treaty and acknowledged to be binding between the two governments, do not embrace any guarantee for the security of the present holders of the grant. The United States can by no means accede to this hypothesis. Indeed this Government is quite astonished, that any such idea should have been, at this late day, advanced by the Mexican Minister. Mr. de la Rosa remarks that by the first article of the treaty it is expressly admitted that Mr. Garay's contract may be set aside by judicial authority. To the President of the United States this appears most strange. There is not one word on the subject in the first article of the treaty, nor is there any such admission, direct or implied, in any other article of the treaty. It is incomprehensible to the undersigned how Mr. de la Rosa should have fallen into this error; because any such admission would have at once defeated the whole end and object of the treaty. So far from admitting that Mr. Garay's contract may be set aside by judicial authority in Mexico, the treaty itself expressly stipulates for the mode, and the only mode in which the right of the grantees and their assignees under the grant of Mexico shall be tried and determined, if disputes should arise. The fifth article of the treaty is in these words :

“ In any difference which may arise between the Government of Mexico and the undertakers, either the present or the future of the work, which may involve the loss of the right to the privilege, the complaining party shall draw up a statement of its pretensions and motives, and a similar statement shall be drawn up by the other party ; and both statements shall be submitted to the decision of two arbiters who hold no diplomatic appointment or commission, and who reside in the Mexican territory. One of these arbiters shall be appointed by the holders of the privilege, and the other by the Government of Mexico ; and these two, in case of disagreement, shall appoint a third, with the qualification above required, who shall decide

the controversy ; and from the decision of these arbiters there shall be no appeal or recourse whatever. Of all other questions which may arise, the Mexican tribunal shall take cognizance."

Against this plain and explicit language, how can it be said that all the privileges conferred on the grantees are subject, nevertheless, to the decision of the domestic and interior jurisdiction of Mexico. The Government of the United States cannot listen, for a moment, to any construction, the effect of which would be to set up explanations of the treaty in conflict with its plain words and provisions. This is of course wholly inadmissible. If Mr. de la Rosa is of opinion that his Government should not ratify this treaty, but should reject it, that is a matter of opinion, resting in his discretion to be communicated or not communicated to his own Government ; but it cannot be made the subject of diplomatic correspondence with the Government of the United States. The treaty has been approved by the Senate, and ratified by the President, with a full and clear understanding of its terms and provisions. It has been transmitted to Mexico for the consideration of that Government. Any explanation of it or any comments upon its interpretation in advance of the final decision of Mexico would be entirely premature and out of place.

The executive Government of the United States will not presume to make, indeed it has no authority to make any interpolations or changes in the treaty, to vary its plain meaning and expressions, or to attach to its ratification any conditions or qualifications whatever. The undersigned has the honor to say to Mr. de la Rosa, that in the opinion of the President this is not a question to be discussed between him and the undersigned. The Government of the United States has acted in this whole matter in entire frankness and good faith, and it will not allow itself to doubt that Mexico will by her acts manifest equal frankness and good faith. Citizens of the United States have embarked their fortunes upon their reliance on the good faith of both governments. They have trusted to the decrees and plighted faith of Mexico ; first, the decree of the 1st and the contract of the 2d March, 1842 ; the decrees of the 28th December, 1843, and of the 5th November, 1846 ; the statement of the Mexican commissioner above referred to, and to subsequent

public official acts of that Government; and finally, they rely on the stipulations of the treaty now the subject of observation. They have already expended great sums of money in commencing the undertaking. More than fifty surveyors and their attendants are now on the route of survey, who went thither with the express permission and under the express sanction of the Mexican Government. More than a hundred thousand dollars have already been advanced by the company associated with the holder of the grant. Mexico has again and again declared, by her laws and her decrees, that it is no objection that those who are engaged in the enterprise as assignees from the first grantee are foreigners; and by the treaty lately negotiated, she has expressly stipulated that the rights of citizens of the United States shall be respected and protected. And though it hardly seems necessary to refer to and recite portions of the treaty, since the treaty in all its parts is before both governments, or to refer more particularly to the decrees and proceedings of Mexico, yet in order to leave no room for controversy or mistake, the undersigned will here again refer to those authentic acts of Mexico, and to those provisions of the treaty itself, which show beyond denial or doubt that Mexico has recognized and does recognize: first, the validity of the grant to Garay; second, the assignable nature of that grant; and third, the fact that at the date of the treaty Mexico knew that a citizen of the United States was a *bona-fide* holder of the grant.

The order of these proofs is:

1. The decree of the Mexican Government of the 1st March, 1842.
2. The contract between Don J. M. de Bocanegra, Minister of Foreign Relations of Mexico, and Don J. de Garay, of the 2d March, 1842.
3. The decree of the Mexican Government of the 9th February, 1843.
4. The decree of the same Government of the 4th October, 1843.
5. The decree of the same Government of the 28th December, 1843.
6. The decree of the same Government of the 5th November, 1846.

7. The note of the Mexican commissioners to Mr. Trist, of the 6th September, 1847.

8. The note of Mr. Clifford to Mr. Lacunza, of the 20th June, 1849.

9. The letter of Messrs. Manning and Mackintosh to Mr. Lacunza, of the 25th July, 1849.

10. The letter of Mr. Lacunza to Mr. Letcher, of the 5th April, 1850, communicating a copy of an order of the same date issued by the Mexican Government to the governor of the State of Oaxaca, directing him to receive with hospitality the American engineers who had been appointed to survey the Tehuantepec route.

11. The first, fifth, eleventh, and twelfth articles of the treaties of the 2d June and 25th January last.

Without entering, therefore, into any discussion upon the provisions of the treaty, the undersigned has the especial instruction of the President of the United States to call the serious attention, both of Mr. de la Rosa and his Government, to the serious embarrassments which may result if this treaty should be rejected, and those citizens of the United States who have with so much laudable zeal entered upon the enterprise and incurred such heavy expenses in its prosecution, should now be turned back on an appeal to their own Government, as well for the disappointment of just expectations as for indemnity for actual losses.

In conclusion, the undersigned has to say to Mr. de la Rosa, that having seen the treaty of the 25th of January negotiated, assented to, and approved by highly respectable and eminent citizens of Mexico, honorably known in other countries as well as in their own, and all this under the sanction of a distinguished citizen just placed by the voice of his countrymen at the head of the Government, the President of the United States cannot persuade himself that such a calamity as its rejection by Mexico now impends over both countries.

The undersigned avails himself of this occasion to offer to Mr. de la Rosa renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

TO SEÑOR DON LUIS DE LA ROSA, &C., &C., &C.

Mr. Webster to Mr. Smith.

DEPARTMENT OF STATE, Washington, May 6, 1851.

SIR: Your despatches to No. 49 inclusive, with the exception of No. 48, have been received. The decision of the Senate upon the Tehuantepec Treaty was the reverse of that intelligence of which you say had reached Mexico. It is to be hoped that the adverse sentiment of the Mexican Congress, of which you speak, will undergo a change, and that the treaty will ultimately be ratified. It is difficult to comprehend the ground for the apprehension to which you refer, that the isthmus, if made a highway for our citizens between the two oceans, would be lost to Mexico as Texas has been. There is not the slightest resemblance between the two cases, and if the treaty were to go into operation there would not be, even if the isthmus were conterminous with the United States territory, for the treaty would compel us to arrest by force, if necessary, not only the hostile designs of foreign powers upon the isthmus, but of such citizens of the United States as might be disposed to defy the sovereignty of Mexico. If the report of the committee of the Mexican Senate, to which you refer, should be published, you will at once send a copy to the Department. It is desirable to know why General Salas had less authority for any of the acts of his administration than for that by which Santa Anna and Herrera were subsequently placed at the head of the Government.

DANIEL WEBSTER.

BUCKINGHAM SMITH, Esq., &c., &c., &c.

Mr. Webster to Señor de la Rosa.

DEPARTMENT OF STATE, Washington, August 25, 1851.

THE undersigned, Secretary of State of the United States, has had the honor to receive the note of Mr. de la Rosa, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, of the 3d ultimo, accompanied by a copy of a law of

the Mexican Congress of the 22d of May last, annulling the decree of General Salas, of the 5th of November, 1846, for the alleged reason that he had no authority to enact it.

This communication has been laid before the President of the United States, who has directed the undersigned to make the following reply :

The right of the Mexican Congress to pass any laws which may conform to the constitution of that republic cannot be questioned. The undersigned will not take upon himself to say that the law communicated by Mr. de la Rosa is unconstitutional in Mexico, and presumes that if any citizens of the United States who may conceive their rights to be thereby affected, should entertain that opinion, they will have no difficulty in obtaining speedy and impartial justice from the judicial tribunals of that country. This impression is confirmed by the note of Mr. de la Rosa to the undersigned of the seventh of March last, in which, on behalf of his Government, he himself declares that the validity of the Garay grant is a judicial question to be decided by the Supreme Court of Mexico.

In his reply to that note, the undersigned contended that the Mexican executive, in negotiating the Tehuantepec Treaty, had waived the consideration of the validity of that grant even as a judicial question ; consequently the information communicated by Mr. de la Rosa has justly excited both surprise and regret.

The grant referred to, and the privileges conferred by the decrees of the Mexican Government relating thereto, including the decree of General Salas of the 5th of November, 1846, in the judgment of the undersigned, constitute a charter. In all civilized countries instruments of this description are considered as contracts between the Government and the parties upon whom they are bestowed, conferring privileges which are not to be revoked without reasonable cause, and without allowing the grantees a hearing in defence of their rights, and are not liable to be annulled at the pleasure of the executive or legislative power. In September, 1847, the Government of the United States was informed by the Mexican Government that the grant referred to was a subsisting privilege, which had been transferred by the Mexican grantee to British subjects, of whose rights Mexico could not dispossess them. The occasion on

which this information was imparted, the circumstances attending it and the fact that it was at once made public by the Mexican Government, may justly be considered to have imposed upon that Government a particular responsibility therefor. That responsibility attached to the Mexican nation and foreign powers, certainly the United States cannot allow it to be rendered null and void by a change of rulers in that country, or in the policy relating to the subject which new rulers may think proper to adopt.

It may have been, as Mr. de la Rosa says, that the elevation of General Salas to the supreme power in Mexico was mainly for the purpose of insuring a more vigorous prosecution of the war with the United States. When, however, he became possessed of the authority, it constituted a government *de facto*, submitted to by Mexico and recognized, it is believed, by other governments as well as by that of the United States. Consequently it is not necessary for the undersigned to inquire into the origin, nature, or limits of that authority. It is notorious, however, that General Salas was a military dictator. As such, on the 4th of August, 1846, he subverted the Government of Paredes, who himself had acquired supreme power by similar means. But, although his authority was necessarily arbitrary and unlimited, he asserted, and the undersigned is not aware that this has been denied, that his conduct in assuming and exercising it was sanctioned by a large majority of the Mexican people. It is certain that the Government of that country, as it now exists, was called into being by his mandate. It is equally notorious that his acts were by no means exclusively of an executive character, and that when he exercised legislative power, his right to do so was not objected to, or even the expediency of his decree of the 5th of November, 1846, publicly questioned, until it must have been known at Mexico that citizens of the United States had become assignees of the privileges granted by it. That in promulgating the decree, he believed he was acting in accordance with public sentiment in Mexico, is manifest from the preamble itself, which says, "That considering this enterprise [the construction of a communication between the two oceans] is approved, and that the orders which are this day given are nothing more than the decree which the

House of Representatives passed last year, and which had also been approved by the committee of the Senate, the discussion thereof in the last mentioned chamber alone being wanting, which discussion could not take place because the report was not presented until the latter part of December. Considering it to be of the highest importance to conclude this business, in order that the grand enterprise for uniting the two seas may, as soon as possible, be carried into effect," &c., &c. When, after the solemn and public declaration of the Mexican Government of September, 1847, citizens of the United States acquired the privileges to which it referred, considering, as they had a right to consider that declaration as one of their titles thereto, the undersigned cannot understand why that Government can properly regard their acts, performed in the exercise of those privileges, as either an insult to Mexico or an invasion of her prerogatives.

But, although the undersigned deems the proceeding of the citizens of the United States who have acquired those rights of British subjects who were the holders of the Tehuantepec privileges, as neither intended to insult the Mexican Government nor justly liable to any such imputation, he must declare his conviction, that one of the motives assigned by Mr. de la Rosa for the course of his Government, is neither quite respectful to the Government of the United States, nor entirely compatible with the existing treaties between the two governments. Those treaties promise, on the part of Mexico, that she will make no discriminations against citizens of the United States in her territories. If, therefore, British subjects are allowed to hold the Tehuantepec privileges, and yet the same are sought to be annulled when citizens of the United States have become possessed of them, because, as she insinuates, those citizens may subvert the authority of Mexico in the isthmus, as it was subverted in Texas, she does in fact make an odious and unjust discrimination against citizens of the United States which ought not to be acquiesced in by this Government. The course of Mexico upon this subject might be less objectionable if it did not in effect and in advance, cast an imputation upon the good faith of this Government. In proof that it does this, the undersigned must remind Mr. de la Rosa of the fifth article of the Treaty

of Guadalupe Hidalgo, which was intended to relieve Mexico from any apprehensions that the United States would give her occasion for complaint in respect to any other part of her territories, similar to that which she conceived she had cause for in regard to Texas. And Mexico has no reason whatever to doubt that the stipulations of that article will be faithfully complied with by the United States.

The alleged apprehensions of Mexico, that Tehuantepec will necessarily, like Texas, be severed from her dominion if citizens of the United States shall be allowed to construct a railroad through it, seem to the undersigned altogether unfounded ; or if they had some appearance of foundation or probability, they could not be allowed to stand against compact and stipulation. The undersigned cherishes the hope that Mexico will not persevere in withholding or denying the privileges which citizens of the United States have acquired in regard to the Tehuantepec communication, and that she will consider and reverse her recent acts, so incompatible with those privileges, believing, as he is willing to believe, that those acts have been the result of hasty proceedings, dictated by an entire misapprehension of their consequences on her own obvious interests, as well as upon the rights of others. Since it cannot but be obvious to Mexico herself, that her recent measures respecting the Tehuantepec grant, cannot but produce a serious impression on the minds of men respecting her good faith and the permanency and respectability of her institutions.

The undersigned avails himself of this occasion to offer to Mr. de la Rosa, renewed assurances of his distinguished consideration.

DANIEL WEBSTER.

TO SEÑOR DON LUIS DE LA ROSA, &C., &C.

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, August 16, 1851.

SIR: This Government feels it to be its duty to instruct you to remonstrate and protest officially and formally, but respectfully, against the expulsion of the surveyors from the Isthmus of Tehuantepec, and especially that of Major Barnard, of the

United States engineer corps. Major Barnard is a commissioned officer of this Government and went to the isthmus with the consent of the Mexican Government, requested and obtained by that of the United States. The President does not understand what sound reason can be offered for this sudden withdrawal of the consent of Mexico and Major Barnard's expulsion from her territories.

The particular circumstances of the case are not known here; you will be careful to inquire into them fully, and communicate them to this Department; but in the mean time, as this act of the Mexican Government appears strange and unaccountable, you will respectfully remonstrate against it as hereinbefore directed.

I am, with entire regard, your obedient servant,

DANIEL WEBSTER.

TO ROBERT P. LETCHER, Esq., &c., &c.

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, August 18, 1851.

SIR: Since your departure for Mexico, several events bearing upon the relations of the United States with that country have occurred, which render instructions for your guidance in regard to them necessary.

Almost simultaneously with the submission of the Tehuantepec Treaty to the Senate, the note, a copy of which you will herewith receive, was communicated to the Department by Mr. de la Rosa, the Mexican Minister, stating that he had been directed by his Government to say that they did not consider that instrument as recognizing the validity of the Garay grant; expressing an expectation that this Government would concur in that opinion, and that without such concurrence, the approbation of the Mexican Congress to the treaty would not be given. Mr. de la Rosa further stated that the validity of that grant was considered by his Government to be a judicial question, to be decided by the Supreme Court of Mexico. This communication could not fail to excite surprise. An existing privilege in regard to the transit-way across the isthmus is

referred to in several articles of the treaty; and the twelfth article requires that the actual holder of the privilege shall give his consent to the treaty, in writing, prior to its submission to the Senate of the United States or to the Mexican Congress. This condition was complied with, and the treaty was approved by the Senate, and ratified by the President of the United States.

The note of Mr. de la Rosa was answered by this Department under date of the 30th of April. You will herewith receive a copy of the answer. It contains a summary of the proceedings in regard to the Garay grant and the treaty, and shows that the object of that instrument could have been none other than to protect the rights of the holder of that grant. To this note no rejoinder has been received. Meanwhile, the President's ratification of the treaty has been sent to Mexico, and there awaits the decision of the Congress and President of that republic. Soon after it reached Mexico, a Mexican law was enacted, repealing the decree of Salas, of the 5th of November, 1846, which extended for two years the privilege for commencing the works on the isthmus, and conferred other privileges in regard to colonization and lands there. A copy of this law has been officially communicated to the Department by Mr. de la Rosa, with the note, a transcript of which is also hereunto annexed, together with my answer thereto. The grounds for the act of Mexican Congress referred to, as stated by Mr. de la Rosa, are that the authority of Salas was limited to such measures as might be necessary for the more vigorous prosecution of the war with the United States, and that the decree in question, not being of that character, was void. Salas, however, was notoriously a military despot. As such, his proceedings were not merely of an executive character, but he also enacted several legislative measures of importance, which had at least as little relation to the war with this country as the decree in regard to Tehuantepec. It is believed that his authority for that purpose has never been questioned; and it is understood that the very Mexican Congress which has repealed his decree relative to Tehuantepec, has refused its assent to another act on the ground of its interfering with a general law of colonization which was passed during the rule of Salas.

But although the decree of Salas has been annulled so far as the legislative power of Mexico may have authority for that purpose, it is silent in regard to the validity of the original and intermediate decrees upon the subject of the Garay grant. It may be the opinion of the Congress and executive of that republic that the repeal of the decree of Salas necessarily carries with it that of the other decrees. The fact that the persons in the employment of the Tehuantepec company have been ordered to abandon the survey and leave the isthmus, may be considered as indicating this opinion. Still it is possible that the more moderate and enlightened of Mexican statesmen may entertain a different opinion, and may hope that this will ultimately prevail so as to secure the ratification of the treaty on the part of that Government. Your best efforts will consequently be devoted to the accomplishment of this purpose. It is not to be denied that, judging from the tone assumed by the organs of public sentiment in Mexico, this will be a difficult, but it is hoped not an impracticable task. The objections to the Garay grant are understood to be partly on account of its having been conferred by Santa Anna, and partly from the alleged prodigality of the grant itself. The friends of Santa Anna are now in a minority in Mexico. It is believed, however, that even his adversaries never questioned his right to make the grant. Though foreigners may not be competent to express a sound opinion in regard to a measure of that description, and though it may not be advisable for you offensively to question the accuracy of the adverse opinion which seems to be prevalent at Mexico, yet this may be done in a prudent manner with the best results. It is not necessary to specify the reasons which you may assign for this. It will, however, occur to you, that as the grant authorizes the grantee to associate foreigners with him in the prosecution of the enterprise, it shows that the grantor had the sagacity to perceive that it could not be completed without their agency. Foreigners, however, could not be expected to embark their capital in such an enterprise in a country ravaged by both a foreign and by civil wars, as Mexico has been almost ever since the grant was made. For the purpose of mitigating party feeling against the expediency of the grant on account of its origin, you may also invite attention to the fact that it is in

the nature of a charter. In all civilized countries instruments of this description are considered as sacred, and the welfare of the public and the interests of Government itself are deemed to depend upon their being so held. If the great public objects for which charters are granted and the private interests involved in them were liable to be sacrificed at the pleasure of the dominant authority, no authority in the State which might succeed it could expect to accomplish a public object by similar means. In a government which has been so changeable as that of Mexico, it is particularly necessary for the public weal that duties undertaken to be performed by the grantees of a charter, instead of being strictly and harshly judged, should be viewed in a spirit of equity and even indulgence. Mexico cannot expect her resources to be developed without the aid of foreign science, enterprise, and capital. These will never seek employment there without assurances of protection from the mutability of its Government and that hostility towards strangers which is a characteristic of the Spanish race. It has been stated that the opposition in that country to the Tehuantepec railroad, springs in a great degree from persons interested in confining the intercourse between the two oceans to the proposed railroad between Vera Cruz and Acapulco. A law granting a privilege for such a road has recently been passed by the Mexican Congress, but it remains to be seen whether, in view of the antecedents in regard to Tehuantepec, it will be ever completed or even undertaken in good faith.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO ROBERT P. LETCHER, Esq., &c., &c., &c.

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, December 22, 1851.

SIR: Your despatches transmitted by Mr. Glover have been received. The intelligence which they communicate respecting the unpopularity of the Tehuantepec Treaty in Mexico, and the probable failure of its ratification by that Government, has occasioned much disappointment and regret. The existing

sentiment in that country on the subject can hardly be accounted for on rational grounds, or in a manner compatible with a desire on its part to reciprocate the feeling of goodwill towards Mexico entertained by us, and which we desire to maintain. This Government cannot reproach itself with any dereliction of duty in its endeavors to prevent citizens of the United States from joining the standard of Carvajal, or joining in any acts of hostility towards Mexico.

You will herewith receive a copy of the correspondence which has taken place between this Department and Mr. de la Rosa, respecting the outbreak in Taumaulipas. From this it will be seen that the President promptly issued his proclamation with a view to check the setting on foot within our territory of expeditions against the Mexican republic. A copy of the special order to General Twiggs on the subject has already been transmitted to you, and you have communicated it to her Government. Unfortunately, the ability of the United States commander on the Rio Grande frontier to carry this order into effect has been in a great degree paralyzed by the desertion of our troops to join Carvajal. This, probably, would not have happened at all, if the extradition treaty between the two governments which is now before the Senate of the United States had been concluded in the terms desired by us. The Mexican Government must also be aware that the best understanding has existed between the officer in command at Fort Brown and General Avalos at Matamoras. Upon the application of the latter a United States steamer was placed at his disposition, for the purpose of conveying General Garay's command from the mouth of the Rio Grande to that city. But while we cannot acknowledge that we have disregarded our obligations to Mexico, the Mexican Government must bear in mind that it has its own duties to discharge, and that every independent nation must be presumed to be able to defend its territory against unauthorized individuals banded together to attack it.

The opposition which the ratification of this treaty meets with, and more especially the proposition to transfer to a European government the right to construct the proposed

communication, produce here impressions very unfavorable to Mexico. In a letter addressed by this Department to Mr. de la Rosa, it was clearly shown, as I thought, that the opposition to the Tehuantepec Treaty was unreasonable and unfounded, and that Mexico was bound in honor and justice to carry into full effect her own public grant. The views taken in that letter have not been answered or attempted to be answered; and this Government is not likely to be driven from its ground on that subject without forcible reasons. We wish well to Mexico; we desire to maintain amicable relations with her; we would even do much to accomplish any reasonable wishes of hers. But then we expect her to fulfil all her contracts, and perform all her duties fully and justly towards this Government and all its citizens. It is well known that, relying upon the grant from the Mexican Government, and upon the protection of the American Government, American citizens have proceeded to the expenditure of large sums of money towards the accomplishment of the great purpose which is the object of the treaty; and if, by the act of the Mexican Government, or its refusal to ratify the treaty, this expenditure should be lost, it cannot be doubted that these citizens will call upon us to demand of the Mexican Government a full indemnity for all losses which may be thus caused. And if, unfortunately, the time for the ratification of the treaty should be suffered to expire, it would then be impossible for this Government not to take the case into serious consideration. We have negotiated with Mexico; we have received her assurances and pledges. Those who have expended and are expending large sums of money, have done so and are doing so in the expectation that Mexico will keep faith with the United States, and that their own Government will do its whole duty toward them. You will present these sentiments strongly and earnestly to the Mexican Government, and admonish it of the necessity of coming to some immediate acceptable agreement on the subject of Tehuantepec, if it desire to retain the respect and good-will of this country.

Information from Mexico published in this country, of a date subsequent to your despatches, represents that a proposition

had been introduced into the Senate of that republic for the construction of the Tehuantepec communication by the British Government. As it cannot for a moment be believed that a proposition of this character would either be adopted or receive any considerable support, detailed instructions in regard to it may not be necessary. You will, however, upon a suitable occasion say to the Minister for Foreign Affairs, that while the United States neither desire dominion on the Isthmus of Tehuantepec, nor contemplate the construction across it of any railroad or canal as a government work, it could not see with indifference that isthmus, or any part of it, pass under the sway of any European State ; or that the railroad or canal should be controlled by the Government of such State.

I am, Sir, respectfully, your obedient servant,

DANIEL WEBSTER.

ROBERT P. LETCHER, Esq., &c., &c.

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, January 31, 1852.

SIR: Your despatches to No. 102, inclusive, have been received.

I transmit by Mr. Rich, Secretary of Legation, a duplicate of the instruction, No. 79, of the 22d ultimo. The President deeply regretted to learn that persons in New York and in this city had been endeavoring to prevent the ratification of the Tehuantepec Treaty by the Mexican Government. This, besides being morally wrong, is made penal by the United States statute of the 30th January, 1799.

It does not appear that the Tehuantepec Treaty had been submitted to the last Mexican Congress which you say rose on the 14th ultimo, and doubts as to its reception by the new Congress, which it is understood was to have assembled on the first instant, may, independently of other conditions, induce President Arista to withhold it from that body also. In this event, as the time limited for the exchange of ratifications expired on the 25th instant, the treaty can only be revived by a new stipulation for an extension of that time, or an entirely new treaty

will be necessary. It is contended by us that the treaty which has been ratified by this Government, was intended to protect the interests of the holders of the Garay grant. This is denied by the Mexican Government, and that grant has been formally annulled by the Mexican Congress. Although an approval of the treaty by that body and its ratification by President Arista, would be tantamount to a repeal of the act revoking the grant and would reinstate it in all its former vigor, the inference is a fair one, that if this impression should be entertained by the new Congress, it would not approve the treaty unless its sentiments upon the subject should materially differ from those of its predecessor.

It is presumed now to be useless further to withhold an impression of an opinion that is in its course adverse to the treaty; the Mexican Government must have been more or less influenced by an expectation that this Government would be willing to renew the offer of fifteen millions of dollars for the mere right of way, which Mr. Triste was authorized to make. If this should be so, you will at once undeceive them in regard to the matter, and assure them that that sum will not in any event again be offered for the purpose. Your request for instructions relative to a new treaty cannot at this juncture be complied with.

I am, Sir, respectfully, your obedient servant,

DANIEL WEBSTER.

TO ROBERT P. LETCHER Esq., &c., &c., &c.

Mr. Webster to Mr. Letcher.

DEPARTMENT OF STATE, Washington, March 16, 1852.

SIR: I transmit a copy of a note of yesterday, addressed by this Department to Mr. de la Vega, the chargé d'affaires *ad interim* of the Mexican Republic, upon the subject of the relations between the two governments, in respect to the convention for the purpose of a transit-way across the Isthmus of Tehuantepec. The communication referred to was deemed to be called for by the critical state of those relations, and by the excited and anxious feelings in regard to them which there is good reason to believe exist in the minds of the people of this country, espe-

cially at the south and west. The persons who entertain the sentiments adverted to are men of commanding influence in their respective States, and deeply convinced of the importance of the Tehuantepec enterprise in itself, and of the obligation of this Government to insist that the rights of our citizens who now hold the grant shall be respected by Mexico in the same manner as she professed to respect the same rights when held by British subjects. Under these circumstances, you will inform the Mexican Minister for Foreign Affairs that if the subject should not have been or shall not be satisfactorily disposed of by the time mentioned in the protocol signed by Mr. Ramirez and yourself on the 21st of January last, it will be impossible for the President to withhold from the Congress of the United States the official correspondence in regard to it, together with such a recommendation to the two Houses as he thinks the occasion demands.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

ROBERT P. LETCHER, Esq., &c., &c.

Mr. Webster to Señor de la Vega.

DEPARTMENT OF STATE, Washington, March 15, 1852.

THE undersigned, Secretary of State of the United States, has the honor to address Mr. de la Vega, chargé d'affaires *ad interim* of the Mexican Republic, for the purpose of inviting his serious attention, and through him that of his Government, to the unsatisfactory state of the relations between the two countries, especially in respect to the transit-way across the Isthmus of Tehuantepec.

Mr. de la Vega is aware that a convention between the United States and the Mexican Republic, for the protection of that transit-way, was signed at the city of Mexico on the 25th of January, 1851, by Mr. Letcher, as the plenipotentiary on the part of the United States, and by Señor Don Gomez Pedraza on the part of the Mexican Republic. This convention was approved by the Senate and ratified by the President of the United States in March last, and that ratification was soon afterwards transmitted to the city of Mexico to be exchanged for the ratification

of the Mexican Government. Although this Government has been anxiously looking for that event, yet, according to the intelligence received at this Department from that country, nothing has been done by the Mexican executive or Congress towards bringing it about. It is true that before the expiration of the time limited for the exchange of the ratifications, Mr. Letcher proposed to the Minister for Foreign Affairs of the Mexican Republic that the time should be extended to the 8th of next month. This proceeding on the part of Mr. Letcher has not been disapproved by the President of the United States, because hopes were entertained that prior to the expiration of that period, the convention would have been ratified by Mexico. If, however, these hopes should prove to be unfounded, and the convention should not go into effect, this Government will feel itself compelled to take into consideration the measures which its duty to its own citizens may require it to adopt, to protect their rights under a voluntary grant made by Mexico of the transit-way across the isthmus. The Government of the United States can in no event be expected to abandon those rights, and ardently hopes that the Mexican Government will do justice to them in season. This hope is strengthened by the fact, that the Tehuantepec company have addressed a memorial to this Department, setting forth the grievances which they have sustained from that Government, and refuting in a manner which cannot fail to be satisfactory to the people of the United States, the reasons alleged by Mexico for inflicting those grievances. Mr. de la Vega is also aware that in a note to this Department of the 7th of March last, Mr. de la Rosa, pursuant to instructions from his Government, offered sundry statements and explanations in regard to the convention above referred to. To that note the undersigned replied at length in a note of the 30th of April. As Mr. de la Rosa made no rejoinder to that reply, this Government is warranted in assuming that the Mexican Government assented to the views therein expressed by the undersigned, or did not see how the argument was to be answered. Under no other supposition can the United States Government find any reason for so unusual a delay in answering a communication from one Government to another, on a subject of the most pressing importance.

The undersigned need not reiterate upon this occasion the good wishes he has often expressed and still entertains for the peace, welfare, and happiness of the Mexican Republic. As the honor of Mexico is conceived to be at stake, the undersigned trusts that she will so acknowledge; and that she will, of her own accord, adjust a controversy so dangerous to the peace of the two countries in a manner which could not fail to consolidate, and, indeed, perpetuate their friendly relations. At any rate it is the determined purpose of the Government of the United States to bring this embarrassing and painful question to a conclusion; it must know, without further and unlimited delay, the ultimate decision of Mexico. Many considerations make this indispensable, and the undersigned still cherishes the anxious hope that that decision may be such as the interests of both countries, and the continuance of the friendly relations now subsisting between them alike require.

The undersigned avails himself of this occasion to offer to Mr. de la Vega renewed assurance of his high consideration.

DANL. WEBSTER.

TO SEÑOR DON J. M. GONZALEZ DE LA VEGA, &C., &C.

Mr. Webster to Señor Larraínzar.

DEPARTMENT OF STATE, Washington, June 30, 1852.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Larraínzar, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, of the 31st ultimo, upon the subject of the rejection by the Mexican Congress of the treaty for the protection of a right of way across the Isthmus of Tehuantepec.

The object of Mr. Larraínzar's note appears to be to review the conduct of Mexico respecting that treaty and to assign causes for its rejection.

The reasons which Mr. Larraínzar assigns for the rejection of the treaty, in fact, are no others than such as have in substance been frequently discussed between the two Governments, and the President does not perceive any utility in going again over that discussion. If, however, Mr. Larraínzar has any dis-

tinct and definite proposition to make to this Government, it will be most respectfully received and answered without delay, as this Government is most anxiously desirous of coming to some arrangement with Mexico on the subject of this communication as early as possible.

Mr. Larrainzar is pleased to say that Mexico herself is extremely anxious for the opening of the same communication. The President is happy to receive this intimation, and hopes that Mr. Larrainzar will be able to distinguish his mission by accomplishing so great an object as would be obtained by bringing the two Governments to a state of agreement and harmony in this respect. He looks earnestly, therefore, for Mr. Larrainzar's proposition. And the undersigned has the honor to say to Mr. Larrainzar, for the information of his Government, that there are three points on which the Government of the United States wishes to be clearly and distinctly understood by Mexico. The first is what indeed Mexico already knows, that the Government of the United States, in seeking to open the communication across the Isthmus of Tehuantepec, has not wished to obtain any exclusive advantage for itself. Its desire has been to have that communication free to all nations; but it has not concealed, and does not wish now to conceal its sense of the importance of that communication to the Government and to the citizens of the United States. The United States possesses a vast territory on the shore of the Pacific, adjoining the republic of Mexico. This territory is fast filling up by an active and enterprising population. One State, formed out of part of it, is a component part of the American Union, and other States will doubtless soon be created and admitted. One of the most practicable communications between these parts of the same country and government is supposed to be by a railroad across the Isthmus of Tehuantepec. This isthmus is a possession of Mexico, but as a medium of intercourse and communication the proposed work across it is highly important to her, to all the rest of the world, and especially to the United States. And Mr. Larrainzar of course well understands that, according to the acknowledged principles of public law and the usages of nations, ancient and modern, the obligations of good neighborhood and national friendship, make it the duty of a state to

allow reasonable transit over its own territories to the citizens and subjects of other friendly governments for the purposes of commerce and other peaceable communications.

The second observation which the undersigned has the honor to submit to Mr. Larrainzar is, that the Government of the United States cannot but entertain serious doubts whether Mexico herself or her citizens will be able, within any reasonable time, to effect so desirable an object by their own resources.

And the third is, that the Government of Mexico must distinctly understand that the Government of the United States will not consent that a communication between the oceans at this point, shall be placed under the exclusive supervision or control of a third power.

It only remains to be added that the assignees of the grant to Don José de Garay are in possession of a privilege emanating from the Government *de facto* of Mexico, which they insist is valid, and has never been annulled by any competent authority. They allege that, in their efforts to fulfil the objects and conditions of this grant, they have incurred many losses and expended large sums of money. To these claims, on their part, the Government of the United States cannot be indifferent.

The undersigned avails himself of this occasion to offer to Mr. Larrainzar an assurance of his very high consideration.

DANIEL WEBSTER.

TO SEÑOR DON MANUEL LARRAINZAR, &C., &C., &C.

Claim of the Jeune Nelly

Mr. Webster to Count de Sartiges.

DEPARTMENT OF STATE, Washington, 3d June, 1852.

SIR: I have the honor to acknowledge the receipt of your note of the 15th of March last, upon the subject of certain claims of citizens of France upon this Government. In regard to the claim in the case of the Jeune Nelly, I must be allowed to remark, that reparation in this case appears first to have been asked for in the note of M. Pageot to Mr. Buchanan, of the 23d of August, 1847, on the ground that the captured vessel had not been warned of the blockade of Vera Cruz, by an entry in her log-book by the officer commanding the blockading force, pursuant to what were assumed to be the principles established by the constant usage of the United States and France in such cases.

The claim was not answered upon its merits until the 17th of January, 1849, when, in a note to M. Poussin, of that date, Mr. Buchanan said that he was not aware of any principle of the law of nations, or any usage between the United States and France, which required the existence of the blockade to be expressly notified to the Jeune Nelly before her capture would have been lawful. He also said that the very question arising in the case had been decided by the Court of the United States for the district of Louisiana, and a copy of the opinion of the judge was transmitted to M. Poussin. In a note of the 23d of January, 1849, that gentleman rejoined that the validity of the capture of the Jeune Nelly could not have been decided by the District Court of Louisiana, because that question was not before the court. He concluded by asking that the affair might be submitted, without further delay, to the decision of a competent tribunal.

This note was answered under date the 14th February, 1851, by a note to M. Boislecomte, which was accompanied by a copy of the opinion of the Supreme Court of the United States, in the case of the *United States vs. Guillem*. This was the very case to which Mr. Buchanan referred in his note of the 17th January, 1849, as having been decided by the United States District Court of Louisiana. It was taken by appeal to the Circuit Court of the same District, and thence to the Supreme Court of the United States. In his opinion, the Chief Justice of the United States declares that the *Jeune Nelly* was undoubtedly liable to capture and condemnation.

You will recollect that among the important circumstances attending the case of the *Jeune Nelly*, one was that, having been wrecked immediately after her capture, she was never brought in for adjudication, and, consequently, there was nothing upon which the jurisdiction of an American Court of Admiralty could attach, except the effects belonging to the passenger on board, which were saved, and, as you are aware, have been delivered to the claimant. And it was for this reason that, in my note to M. Boislecomte above referred to, I stated that there seemed to be no other mode of obtaining a judicial decision as to the lawfulness of the capture of the *Jeune Nelly*, except by instituting proceedings against the captain of the United States War Steamer *Hunter* or his representatives. I am not aware that the claimants have taken any steps to carry this suggestion into effect. As no part of the captured property is known to be in existence, it is obvious that no further judicial proceedings in the matter can be set on foot by this Government.

It may be admitted that neither France nor the United States has acknowledged the legality of the blockade of an extensive coast by proclamation only, and without a force sufficient to carry the same into effect. It may also be true that, with a view to protect innocent neutrals proceeding from a distance to a blockaded port from capture on account of an honest ignorance on their part of the existence of the blockade, a previous warning thereof, by an entry, or other mode of actual notice, on the papers of the vessel has been deemed advisable. The *Jeune Nelly* must have known that *Vera Cruz* was actually

blockaded, and that the blockade was maintained by a competent force. Consequently, she could not with propriety expect any such warning. She was captured in the act of leaving the blockaded port. Her capture must therefore be considered as lawful; and this Government cannot, under existing circumstances, hold itself accountable therefor.

An answer in regard to the other claims mentioned in your note will be transmitted to you as soon as this Department shall receive further information upon the subject, which has been requested of the Department of War.

I avail myself of this occasion, Sir, to offer to you a renewed assurance of my very high consideration.

DANL. WEBSTER.

M. DE SARTIGES, &C., &C., &C.

The Classification and Compensation of Clerks

Report of the Secretary of State, made in compliance with a resolution of the Senate in relation to the examination, promotion, classification, and compensation of the clerks in the several Departments. July 3, 1852. (Referred to the Committee on Finance, and ordered to be printed.)

DEPARTMENT OF STATE, Washington, June 30, 1852.

TO THE SENATE OF THE UNITED STATES.

THE undersigned, Secretary of State, in answer to a resolution of the Senate of the 7th of March last, requesting a report from the heads of the departments, upon some plan for classifying the clerks and apportioning their salaries, has the honor to report that he is not able to agree with the other heads of departments in the report which they have made to the Senate.

In his opinion it is not expedient to establish any board for the examination of candidates either for original appointment or for promotion. The head of a department may always readily consult the more experienced clerks upon the fitness of new applicants, or the propriety of promotions. This is now always done in the Department over which the undersigned has the honor to preside.

The business of promotion always requires great consideration in this Department, because the duties of the several *bureaux* are very various, and it is not always easy to make transfers from one line of occupation to another.

This must more especially be left to the discretion of the Secretary. Few things are more prejudicial to the public service than the removal from office of experienced and faithful clerks of proved ability and industry. This is a general truth

verified by all experience both in courts of law and in public office.

The heads of departments must necessarily be chosen according to political occurrences, but the knowledge and experience of those who perform subordinate duties is quite essential to the prompt and safe administration of public affairs. Their acquaintance with precedents, and knowledge of those duties which can only be gained by long service and careful industry, is of the greatest use and importance; no one, in coming new into any one of the various branches of this Department, can learn in a short time the actual state of things in the bureau to which he may be assigned.

While the Department has been under my care, no removal has been made without proof of notorious incapacity or inattention to duty.

The great present want of this Department is an assistant secretary who should be a person of accomplishments and knowledge of diplomatic usages. I again recommend that the appointment of such an officer be given to the Secretary of State, and that he have the same salary as is now allowed to the assistant secretary of the treasury.

The salary of the translator and librarian is fixed by law at sixteen hundred dollars. This is not adequate and I recommend an increase. The duties of translator are high and responsible, and very laborious; and I think also, that provision should be made for the appointment of a clerk, to be an assistant translator, with a salary of twelve or fourteen hundred dollars per annum.

I beg leave to add that all the clerks in this Department ought to possess higher qualifications than those of mere penmen and copyists. In general, they should understand the modern languages, especially the French and Spanish; be persons of literary attainments, and should possess a good knowledge of geography and statistics and the laws and history of their own country, and a quick capacity for learning.

The clerk on claims should be a person of much political knowledge and especially well versed in national law, and competent to investigate questions of a judicial character. It is of great importance that the claims of American citizens

against foreign governments, in behalf of which the interposition of this Government is required, should be more thoroughly examined and more thoroughly understood than may be expected from the *ex parte* statements of the claimants, inasmuch as the honor of the Government requires that its interposition be given in no case not apparently founded in law and justice.

All of which is most respectfully submitted.

DANL. WEBSTER.

The American Fisheries

DEPARTMENT OF STATE, Washington, July 6, 1852.¹

INFORMATION of an official character has been received at this Department to the following effect:—

“The late Ministry of England was opposed to the granting of bounties, on principle; and in consequence, it steadily refused to give the necessary assent to acts of the Colonial Legislatures, granting bounties to the fisheries. The colonies complained severally, of this interference with their local affairs; and they further complained, that the Government declined to enforce the provisions of the Fishery Convention of 1818, and thereby permitted American fishermen to encroach upon the best fishing grounds, from which, under the legal construction of the treaty, they ought to be excluded.

“With the recent change of Ministry in England, has occurred an entire change of policy. The present Secretary of State for the Colonies, Sir John Packington, has addressed a circular letter to the Governors of the several North American Colonies, an extract from which is as follows:—

Downing Street, May 26, 1852.

Among the many pressing subjects which have engaged the attention of Her Majesty's Ministers, since their assumption of office, few have been more important, in their estimation, than the questions relating to the protection solicited for the fisheries on the coasts of British North America.

Her Majesty's Government have taken into their serious consideration the representations upon this subject, contained in your despatches, noted in the margin, and have not failed to observe, that whilst active measures have been taken by certain colonies for the purpose of encouraging their fisheries, and of repelling the

¹ Published in the Boston Courier, July 19, 1852.

intrusion of foreign vessels, it has been a subject of complaint that impediments should have been offered by the policy of the Imperial Government to the enactment of bounties, considered by the local Legislatures essential for the protection of this trade. Her Majesty's Ministers are desirous of removing all grounds of complaint on the part of the colonies, in consequence of the encroachments of the fishing vessels of the United States upon those waters, from which they are excluded by the terms of the Convention of 1818, *and they therefore intend to despatch, as soon as possible, a small naval force of steamers or other small vessels, to enforce the observance of that Convention.*

This announcement is accompanied by the following, as to bounties : —

With regard to the question of promoting the fisheries of the British Colonies by the means of bounties, Her Majesty's Government, although desirous not to sanction any unnecessary deviation from that policy, which regulates the commerce of this country, are still disinclined to prevent those colonies, by the interposition of imperial authority — and especially pending the negotiation with the United States of America for the settlement of the principles on which the commerce with the British North American Colonies is hereafter to be carried on — from adopting the policy which they may deem most conducive to their own prosperity and welfare.

“The vessels of war mentioned in the above circular despatches, are expected to be upon the coasts of British North America, during the present month (July), when, no doubt, seizures will begin to be made, of American fishing vessels, which in the autumn pursue their business in indents of the coast, from which it is contended, they are excluded by the Convention of 1818.

“Meantime, and within the last ten days, an American fishing vessel called the Coral, belonging to Machias, in Maine, has been seized in the Bay of Fundy, near Grand Manan, by the officer commanding Her Majesty's cutter Netley, already arrived in that bay, for an alleged infraction of the fishing convention ; and the fishing vessel has been carried to the port of St. John, New Brunswick, where proceedings have been taken in the

Admiralty Court, with a view to her condemnation and absolute forfeiture.

“ Besides the small naval force to be sent out by the Imperial Government, the colonies are bestirring themselves also for the protection of their fisheries. Canada has fitted out an armed vessel to be stationed in the gulf ; and this vessel has proceeded to the fishing grounds, having on board not only a naval commander and crew, with power to seize vessels within limits, but also a stipendiary magistrate and civil police, to make prisoners of all who are found transgressing the laws of Canada, in order to their being committed to jail, in that colony, for trial.

“ The colony of Newfoundland has fitted out an armed vessel for the purpose of resisting the encroachments of French fishing vessels on the coast of Labrador ; but when ready to sail from her port, the governor of that colony, acting under imperial instructions, refused to give the commander of this colonial vessel the necessary authority for making prize of French vessels found trespassing. This is an extraordinary circumstance, especially when taken in connection with the fact that the like authority to seize *American* fishing vessels, under similar circumstances, has never been refused to the cruisers of any of the North American colonies.

“ The colony of Nova Scotia has now four armed cruisers, well manned, on its coasts, ready to pounce upon any American vessels who may, accidentally or otherwise, be found fishing within the limits defined by the crown officers of England.

“ New Brunswick has agreed with Canada and Nova Scotia to place a cutter in the Bay of Fundy to look after American fishermen there ; and at Prince Edward Islands, Her Majesty's steam frigate *Devastation* has been placed under the instructions of the governor of that colony.”

The first article of the Convention between the United States and Great Britain of the 20th October, 1818, is in these words :—

Whereas, differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His

Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramean Islands, on the western and northern coast of said Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands; and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the straits of Belle-isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors, of His Britannic Majesty's dominions in America, not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbors, for the purpose of shelter, and repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

It would appear that by a strict and rigid construction of this article, fishing vessels of the United States are precluded from entering into the bays or harbors of the British provinces, except for the purposes of shelter, repairing damages, and obtaining wood and water. A bay, as is usually understood, is an arm or recess of the sea, entering from the ocean between capes or headlands; and the term is applied equally to small and large tracts of water thus situated. It is common to speak

of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water.

The British authorities insist that England has a right to draw a line from headland to headland, and to capture all American fishermen who may follow their pursuits inside of that line. It was undoubtedly an oversight in the Convention of 1818, to make so large a concession to England, since the United States had usually considered that those vast inlets or recesses of the ocean ought to be open to American fishermen, as freely as the sea itself, to within three marine miles of the shore.

In 1841, the Legislature of Nova Scotia prepared a case for the consideration of the Advocate General, and Attorney General of England, upon the true construction of this article of the Convention. The opinion delivered by these officers of the crown was, — “That by the terms of the Convention, American citizens were excluded from any right of fishing within three miles from the coast of British America, and that *the prescribed distance of three miles, is to be measured from the headlands or extreme points of land next the sea*, of the coast or of the entrance of bays or indents of the coast, and consequently *that no right exists on the part of American citizens, to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, may be at a greater distance than three miles from the shore of the bay*; — as we are of opinion that the term ‘headland’ is used in the treaty to express the part of the land we have before mentioned; including the interior of the bays, and the indents of the coast.”

It is this construction of the intent and meaning of the Convention of 1818, for which the colonies have contended since 1841, and which they have desired should be enforced. This, the English Government has now, it would appear, consented to do, and the immediate effect will be, the loss of the valuable fall fishing to American fishermen; a complete interruption of the extensive fishing business of New England, attended by constant collisions of the most unpleasant and exciting character, which may end in the destruction of human life, in the involvement of the Government in questions of a very serious nature, threatening the peace of the two countries. Not

agreeing that the construction thus put upon the treaty is conformable to the intentions of the contracting parties, this information is, however, made public to the end that those concerned in the American fisheries may perceive how the case at present stands, and be upon their guard. The whole subject will engage the immediate attention of the Government.

DANIEL WEBSTER.

Secretary of State.

The Claim of Peru to the Lobos Islands

Mr. Webster to the Secretary of the Navy.

DEPARTMENT OF STATE, Washington, June 5, 1852.

SIR: I transmit herewith a copy of a letter of the 2d instant, addressed to this Department by Mr. James C. Jewett, the master of the barque *Philomela*, of New York, and a copy of the reply of the Department to the same, under date the 5th instant, relative to the right of citizens of the United States to take guano from the Lobos Islands.

As my letter has been approved by the President, I would suggest that a vessel of competent force be ordered to proceed to and remain at those islands for the purpose of protecting our citizens, and their property, who may resort thither. It will be obvious to you that our shipping proceeding from the Atlantic States to California and Oregon will derive great advantages from taking in return cargoes of guano at those islands; and that the great and increasing demand for the article, especially in Virginia and Maryland, will thereby receive a great impulse.

An extract from that part of the narrative of Captain Morrell which relates to those islands, is also herewith enclosed.

I have the honor to be, Sir, very respectfully, your obedient servant,

DANL. WEBSTER.

HON. WILLIAM A. GRAHAM, *Secretary of the Navy.*

Mr. Webster to Mr. Jewett.

DEPARTMENT OF STATE, Washington, June 5, 1852.

SIR: I have to acknowledge the receipt of your letter of the 2d instant, inquiring whether citizens of the United States can take guano from the Lobos Islands, which are situated near the

coast of Peru, without infringing upon the rights of the citizens or subjects, or Government, of any other nation.

In reply, I have to inform you that if those islands should lie within the distance of a marine league from the continent, or if, being further than that distance, should have been discovered and occupied by Spain or by Peru, the Peruvian Government would have a right to exclude therefrom the vessels and citizens of other nations except upon such conditions as it may think proper to prescribe. There can be no doubt that the title of Peru to the Chincha Islands, whence guano is now chiefly taken, is founded upon the basis of discovery and occupancy. That article was taken from those islands and used as a manure by the Peruvians anterior to the conquest of Peru by Spain. It continued to be so taken and used throughout the Spanish dominion in that country, and this practice has been kept up to the present day. Although those islands are uninhabitable, the custom of resorting to them from the neighboring continent for the purpose of procuring guano may be said to have constituted such an occupancy of them as to give to the sovereign of the continent a right of dominion over them under the law of nations. This Department, however, is not aware that the Lobos Islands were either discovered or occupied by Spain or by Peru, or that the guano on them has ever been used for manure on the adjacent coast or elsewhere. It is certain that their distance from the continent is five or six times greater than is necessary to make them a dependency thereof, pursuant to public law. On the other hand, it is quite probable that Benjamin Morrell, Jr., who, as master of the schooner *Wasp*, of New York, visited those islands in September, 1823, may justly claim to have been their discoverer. He gives a full account of them in his narrative, published at New York in 1832. Under these circumstances, it may be considered the duty of this Government to protect citizens of the United States who may visit the Lobos Islands for the purpose of obtaining guano. This duty will be the more apparent when it is considered that the consumers of Chincha Island guano in this country might probably obtain it for half the price they now pay, were it not for the charges of the Peruvian Government. I shall consequently communicate a copy of this letter

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to the Secretary of the Navy, and suggest that a vessel-of-war be ordered to repair to the Lobos Islands for the purpose of protecting from molestation any of our citizens who may wish to take guano from them.

I am, Sir, very respectfully, your obedient servant,

DANL. WEBSTER.

JAMES C. JEWETT, *Master of Barque Philomela, New York.*

Mr. Webster to Mr. Jewett.

DEPARTMENT OF STATE, Washington, August 21, 1852.

SIR: Your letter of the 16th instant, with the accompanying papers, relative to your proceedings for the purpose of taking guano from the Lobos Islands, has been received. Since the one addressed to you by this Department, under date the 5th, in answer to yours of the 2d of June last, information has reached the Department that the Peruvian Government claims jurisdiction over these islands; and that, in 1842, it issued two decrees prohibiting any foreign vessels, upon the penalty of confiscation, from removing guano from any of the islands near the coast of Peru, without a license from that Government. Under these circumstances, it is expected that the vessels which have proceeded thither under your auspices will not make use of the arms with which it appears, from your letter of the 16th instant, they are provided, for the purpose of forcibly resisting the Peruvian authorities. You must be aware that such a resistance would be an act of private war, which can never receive any countenance from this Government. The naval commander of the United States in the Pacific will also, under existing circumstances, be directed to abstain from protecting any vessels of the United States which may visit those islands for purposes forbidden by the decrees of the Peruvian Government, until he shall receive further orders.

Some of the statements contained in your letter of the 2d of June last had a tendency to mislead us, and, as intimated above, may, it is apprehended, have done so.

I am, Sir, very respectfully, your obedient servant,

DANL. WEBSTER.

JAMES C. JEWETT, Esq., *New York.*

Mr. Webster to Mr. Osma.

DEPARTMENT OF STATE, Washington, August 21, 1852.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the several communications of Mr. Osma, chargé d'affaires of Peru, of the 25th June, 3d July, and the 9th instant. The first mentioned of these communications, however, did not come to his knowledge until the 6th July, after he had left Washington for a short absence. He very much regrets that circumstances have prevented an earlier answer to these several communications; but as they all relate to the same subject, all will now receive a common reply.

In the first place the undersigned will remark to Mr. Osma, that the Government of the United States has not now nor ever has had any intention to facilitate the particular purposes of any persons such as Mr. Osma calls speculators, further than those purposes are conformable to public law as well as to the laws of the United States. This Government knows of no companies, no associations, and no individuals in whose behalf it undertakes any special protection. The question is a general one in which all the citizens of the United States engaged in commerce have an interest, and that interest is equally respected by the United States, regardless of individuals.

In the next place, the undersigned expresses the hope that it was not Mr. Osma's purpose, by any expression in his note of the 9th instant, to convey any intimation that the proceedings of this Government in regard to the subject, have been influenced in the slightest degree by any conviction of the relative strength or weakness of the parties. Such an intimation if intended to be made would require no refutation, since all the world knows the manner in which the republics of South America, formed out of the ancient possessions of Spain, have been treated by this Government from their earliest origin to the present day.

The undersigned will make a further remark, to prevent mistake and misunderstanding, upon Mr. Osma's observations upon the conversation between him and the undersigned in the Department of State, on the 2d of July, and that is, that the

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supposed discovery of Captain Morrell, mentioned in that conversation, was not relied upon by the undersigned as founding an exclusive right to the Lobos Islands on the part of the United States. It was only mentioned as a fact fit to be considered in common with other facts and occurrences. The truth appears to be that Captain Morrell was on a voyage of discovery, and did in fact discover or was supposed to have discovered guano on these islands. It is certain that no book generally known and circulated in this country mentioned the fact of the existence of guano on these islands, until Captain Morrell's narrative was published, in 1832.

After these preliminary remarks, the undersigned now proceeds to the consideration of the main subject. In his several communications Mr. Osma asserts the right of Peru to all the Lobos Islands on the ground that she has always exercised authority over them; that they belong to Peru as they formerly belonged to Spain; and that from time immemorial the Peruvian Indians have been in the habit of visiting them for the purpose of catching seals, killing birds, and gathering eggs, and that this exclusive right to these islands by Peru has never been doubted or disputed.

The question is, are these unqualified declarations of Mr. Osma strictly accurate? The Lobos, or Seal Islands, as their name imports, lie in the open Pacific Ocean — the nearest of them twenty or thirty miles from the coast of Peru. They are — as Mr. Osma admits — mere barren rocks in the sea, uninhabited and uninhabitable. Fisheries, and the pursuit of amphibious animals, especially the seal, have long been carried on around their shores, and even on the shores themselves, since it is well known that seals are usually taken and killed upon the land. In these pursuits, and in this use of the islands, citizens of the United States were engaged for half a century before any actual interruption took place by the Peruvian Government or anybody else — their visits to them having commenced at least as early as 1793. All this is well known to the commercial world. Now it is quite certain that, if Peru held and possessed full sovereignty over these islands, this fishing near the shore, and this pursuit and killing of amphibious animals upon the land, was as much an invasion of that

sovereignty as is the taking of guano from them now. Nor was the case so unimportant as that Peru might have regarded this use of the islands by citizens of the United States as an indulgence merely—supposing her to possess the exclusive right—since the pursuit and destruction of seals, which have at last terminated in their almost entire disappearance, must have been a matter of much importance to the Government. Nevertheless no complaint was made of this course of things, nor any interruption attempted or threatened, until September, 1833, in which month, as it would now appear, a decree was issued by the Peruvian Government, prohibiting foreigners from fishing for seals and amphibious animals on the shores and islands of Peru, and declaring that the captains of foreign vessels who evaded the order should be considered as smugglers. It is important to observe that this decree was issued after the publication of Captain Morrell's narrative.

This decree was sudden and unexpected, and therefore the *chargé d'affaires* of the United States at Lima was under the necessity of acting upon it without orders from his own Government. He immediately addressed a note on the subject to the Minister of Foreign Relations of Peru, in which, without formally denying the original right of Peru, he requested a reconsideration of the decree, or that it might be so far modified as to permit to the citizens of the United States the pursuit of an occupation which they had been allowed quietly to follow for a number of years; and adding that the decree could not but be regarded as unfriendly to the Government of the United States.

So far as is known to the undersigned, no answer or reply was ever made to this remonstrance; and it is certain that the citizens of the United States continued to pursue their usual avocations without interruption, notwithstanding this decree. If such an interruption had been made by the Peruvian authorities, it would at once have brought the question of the sovereignty of Peru over the Lobos Islands to the attention of this Government, as happened a few years before in the case of the right of the Government of the Argentine Confederation to claim sovereignty over the Falkland Islands. It is true that the decree of 1833 makes no particular mention of the Lobos Islands, but it is directed generally against fishing on the

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coasts and islands of Peru. Nevertheless, this cannot be regarded as affecting the general right of citizens of the United States, founded on long and undisputed usage.

Here then is a formal remonstrance on the part of the United States against the asserted sovereignty of Peru over the Lobos Islands, to which no answer, so far as it appears, was given, nor any intimation made that, notwithstanding this remonstrance, the decree would be enforced. It is quite evident that although the decree was general in its terms, it was intended to be levelled especially against citizens of the United States, as the subjects of other countries did not partake, to any considerable extent, in the fisheries which were prohibited. Can Mr. Osma's averment, therefore, be maintained, in which he asserts the universal and absolute sovereignty of Peru never to have been denied or questioned by any government? And if Peru has suffered these barren rocks to be visited and used by citizens of the United States for a long course of time, and for all the purposes for which they were known to be valuable, is the case altered when they are found capable of a new use? Is not the natural inference either that Peru never claimed any exclusive right over the islands, or that, if such claim had been made by any formal or official act of the Government, such claim had been abandoned, at least so far as citizens of the United States were concerned?

Mr. Osma refers to a decision of the English Government, and observes, that as both the mercantile and agricultural classes in the British Empire have a strong interest averse to the claim of Peru, if the British Government has decided in favor of that claim, that decision must be ascribed to considerations sufficient to outweigh a regard for the interests of British farmers and ship owners. But the two cases may justly be considered as essentially different. When the decree of 1833 appeared, Mr. Wilson, the consul general at Lima, in a communication to his Government said: "For many years no British vessel has been engaged in this fishery, but great abuses have been committed by American vessels;" and the year afterwards, writing upon the subject of the seizure of the British schooner *Campeadora* for killing seals at the Lobos Islands, he admitted the right of Peru to those islands. At

the same time he adds: "Lord James Townshend, the commander of His Majesty's naval forces in the Pacific, takes a different view of the question; and he himself told me that he considered that His Majesty's subjects had a positive right of fishing on all these islands, unless they should be actually occupied by some Peruvian authority, or protected by the constant presence of some Peruvian man-of-war to warn off vessels."

It will be borne in mind that when the case of the *Campeadora* occurred, the use, and perhaps even the value of guano as a manure, was unknown in England. Before that case was decided, however, the British Government may be said to have been irrevocably committed to an acknowledgment of the right of Peru to the Lobos Islands, by their acquiescence in the opinion expressed by Mr. Wilson, their diplomatic agent, and the answer to that communication from the foreign office; for in that answer, under date of the 30th August, 1834, Lord Palmerston said: "It would therefore appear that the Peruvian Government have a right to prohibit foreign vessels from fishing upon the coasts immediately adjoining to those islands, as well as upon the coasts of Peru itself, there being no evidence in the papers which you have transmitted, of any right of fishing acquired by long and uninterrupted usage."

It is clear, therefore, that the British Government yielded the point, precisely because it had no such ground to stand on in behalf of its own subjects as the Government of the United States does possess, and may well stand on in behalf of its own citizens. And it may be regarded as a question still open in England down to last year, for on the 10th of May of that year, Lord Stanley, Under Secretary of State for Foreign Affairs, in answer to a letter from Mr. Wentworth Buller, says: "I am to state to you in reply whether the islands of Lobos de Afuera and Lobos de Tierra belong of right to Peru, or are claimed by Peru as dependencies." His lordship does not find in the Peruvian constitution, published after Peru had separated itself from Spain, any mention of those islands as being dependencies of Peru; but it appears to Lord Palmerston that their proximity to Peru would give to that State a *prima facie* claim to them.

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Now it is certain that the fact does not, under the rule of public law, bear out this last observation of Lord Palmerston, because the distance from the shore of all these islands is five or six times greater than the three marine miles extend. It may be here added that it is well understood that a powerful class of British subjects, distinct from those of merchants and farmers, has a vital interest in maintaining the regulations for the export of guano from Peru upon their present footing. It may not be entirely satisfactory, therefore, to take the case of the *Campeadora* or that of the *Hibernia*, which afterwards occurred, alone into consideration, in endeavoring to account for the policy which the British Government has thought proper to adopt in regard to this subject. However this may be, it is quite clear that the English case and the American case are quite different, for the reasons already stated. As has been shown, the representative of the American Government in Peru remonstrated against the issuing of the decree of 1833. And it is a consideration of very great weight in this case, that the main object of that decree, as it fully appears, was to drive off from the coasts and islands of Peru, including of course those of Lobos, the fishing vessels of the United States. Now, if such were the sole or principal object of the decree, and the agent of the United States formally remonstrated against that decree, how is the subsequent conduct of Peru and her entire silence to be reconciled with the idea that she really supposed herself possessed of absolute sovereignty over those islands? She certainly made no attempt to enforce that decree against vessels or citizens of the United States, but suffered things to go on as they had gone on through a long course of years.

The undersigned has thus far spoken of the actual facts and continued usage, which he supposes to belong to the just consideration of this case.

Mr. Osma, in his recent communication, refers to the authority of Alcedo to prove that those islands are within the sovereignty of Peru, and have always been so considered. In the decision of a question purely geographical, relating to any part of the American hemisphere, and especially to that formerly under the dominion of Spain, the undersigned acknowledges that Alcedo is entitled to almost implicit confi-

dence; but in the passages to which Mr. Osma refers, he was speaking merely geographically. He was not discussing any question of right, founded either on discovery or usage, or any other political consideration; and if, as Mr. Osma says, that great geographer in speaking of the Lobos Islands uses words plainly or by implication assigning to Spain the sovereignty over those islands, this may be ascribed to his loyalty as a Spanish subject and an officer in the King's service, a sentiment which would not allow him to entertain a doubt of the right of his sovereign to any regions which he might claim, by whatever title. Alcedo therefore describes the Lobos Islands as belonging to the coast, and to a particular province of Peru. The fact that they are islands, however, leaves the question open as to the distance between them and the coast of Peru, and he seems to have taken it for granted that because they happened to be nearest to the province of Saña, they were necessarily included within the limits of that province—a proposition which cannot be supported.

In this case, therefore, the authority of Alcedo cannot be regarded as decisive. In order that it should be so considered, the undersigned must be informed what acts of jurisdiction His Catholic Majesty exercised over those islands. The occasional visits of Indians from the neighboring continent, to which Mr. Osma refers, cannot be said to have imparted to the sovereign of Spain, or the Government of Peru even as good a title to those islands as the habitual resort thither of the vessels of the United States, so long and uninterruptedly continued, for the purpose of capturing seals on their shores and whales in the adjacent ocean, would give to the United States. The use of these islands by the Peruvian Indians for the last half century has no doubt been vastly less than by the citizens of the United States; and upon the ground of Mr. Osma's argument, a better title could be asserted by possession on the part of the United States than could be maintained by Peru.

The undersigned freely admits that acts of the Peruvian Government founded on supposed rights, when not objected to, are fit to be regarded as having more or less weight on the question of right, so far as that right depends upon possession. If, therefore, it be asked why this Government did not also

protest against the Peruvian decrees of the 21st of March and 10th of May, 1842, by the fifteenth article of the former, and the third of the latter of which the penalty of confiscation is denounced against any national or foreign vessel which shall anchor at or approach the islands or places in which there may be guano, without the usual license from the authorities empowered to issue the same, it may be answered that the very existence of those decrees was not known to this Government until they appeared in the British parliamentary documents on the subject of the Lobos Islands, presented to the House of Commons on the 14th day of May last. There is nothing which the undersigned can find in the despatches of the chargé d'affaires of the United States at Lima to show that the decrees were communicated to or known to him. If these decrees had been known here at an earlier date, they would have received the attention of this Government.

As to the claim of Peru to those islands, founded on the law of proximity, the question will appear to be free of doubt. The well settled rule of modern public law on this point is, that the right of jurisdiction of any nation, whose territories may border on the sea, extends to the distance of a cannon shot, or three marine miles from the shore, this being the supposed limit to which a defence of the coast from the land itself can be extended.

The whole discussion, therefore, must turn upon this, viz. : the Lobos Islands lying in the open ocean, so far from any continental possessions of Peru as not to belong to that country by the law of proximity or adjacent position, has the Government of that country exercised such unequivocal acts of absolute sovereignty and ownership over them, as give to her a right to their exclusive possession, *as against the United States and their citizens*, by the law of undisputed possession? And the undersigned repeats that this is not a question between Peru and other governments, who may have more or less distinctly admitted her right, but it is a question between Peru and the United States, who have so long exercised that right and remonstrated against its interruption.

The Government of the United States, however, is prepared to give due consideration to all facts tending to show posses-

sion or occupancy of the Lobos Islands by Peru, and is not inclined to stop or preclude discussion until the whole matter shall be thoroughly investigated. If there are any facts or arguments which have not been brought to its consideration they shall receive the most respectful and friendly attention. If it shall turn out that—as has been intimated—those islands are uninhabited and uninhabitable, and therefore incapable of being legally possessed or held by any one nation, they and their contents must be considered as the common property of all. Or if unprotected by the presence of Peruvian authorities, and without actual possession, their use has been by Peru abandoned or conceded—without limitation of time—to citizens of the United States for a long period, or yielded in consequence of the remonstrance of this Government or its agents, then no exclusive ownership can be pretended, as against the United States at least.

Under all the circumstances the President thinks it most advisable that full instructions on this subject should be despatched to the *chargé d'affaires* of the United States at Lima, and that proper orders should be given to the naval forces of the United States in that quarter, to prevent collision until further examination of the case. No countenance will be given to the authors of such enterprise, claiming to be citizens of the United States, who may undertake to defend themselves or their vessels by force, in the prosecution of any commercial enterprise to these islands. Such acts would be acts of private war, and their authors would thereby forfeit the protection of their own Government.

The undersigned avails himself of this occasion to offer to Mr. Osma a renewed assurance of his very high consideration.

DANIEL WEBSTER.

TO SEÑOR DON J. Y. DE OSMA, &C., &C.

To John Randolph Clay, Esquire.

DEPARTMENT OF STATE, Washington, 30th August, 1852.

SIR: I transmit a copy of a recent correspondence between this Department and Mr. Osma, and between the Department and Mr. J. C. Jewett, relative to the Lobos Islands. Our

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information respecting the acts of jurisdiction which both Spain and Peru may have exercised over those islands, is by no means complete, and it is desirable that you should supply our deficiencies which, it is presumed, can easily be done at Lima. It is particularly desirable to know, whether the aborigines of Peru, or the inhabitants of that country while it was a dependency of Spain, were in the habit of taking guano from the islands off the Peruvian coast and especially from the Lobos Islands; whether guano has been taken from the latter, either for exportation abroad or for use on the neighboring main land, since Peru became independent, and whether if the Peruvian Government has exercised acts of jurisdiction over Lobos de Tierra, it has exercised the same or other similar acts over Lobos de Afuera. You will also examine the files of the Legation for the purpose of ascertaining if the Minister for Foreign Affairs of Peru replied to Mr. Larned's note of the 30th of September, 1833, remonstrating against the decree upon the subject of the fisheries. A copy of any other decrees upon that subject and also of those of 1842, respecting guano, would also be acceptable, as well as any information tending to show that the latter were officially communicated to the Legation of the United States at Lima.

Upon the present state of the facts and the evidence, this Government cannot admit the right of Peru to drive away United States vessels from the Lobos Islands. We see nothing thus far to change the sentiments expressed in the letter of this Department to Mr. Osma, and it would be a want of candor not to say, that we are not aware of any source from which new facts favorable to the claim of Peru are likely to be drawn. Nevertheless it is the President's purpose to give a fair consideration to everything which the Peruvian Government may produce in support of its asserted right. In the meantime, it is a great object to prevent any forcible collision. The bearer of this despatch, Mr. Miles of New York, will probably be able to state accurately the number of vessels which have proceeded from ports of the United States under the expectation of loading with guano at the Lobos Islands. These are supposed to be from twenty to thirty. At a more recent period, many other vessels, it is said, have been chartered under the idea of claiming

indemnification of this Government if they should not be allowed to load with guano at those islands without hindrance from the Peruvian Government. These last operations and their projectors will find no countenance here.

All danger of collision would probably be averted if the Peruvian Government would allow those United States vessels which have sailed from our ports between the 1st of June and the 24th instant, for the Lobos Islands, to load with guano there without molestation. A letter to the President on this subject from Mr. Bokee, the naval officer at New York, is herewith transmitted. This communication fully sets forth the importance of the measure to the parties immediately interested.

Whatever may be the exclusive rights of Peru to the Lobos or other islands near the Peruvian coast abounding with deposits of guano, the conviction is deep and general among the consumers of the article in foreign countries, or at least in the United States, that the high price of guano is occasioned by the policy which that Government has thought proper to adopt in reference to its exportation, and that that policy tends to the advantage of a few individuals at the expense of the consumers. If, therefore, the Peruvian Government expects its exclusive claims to be assented to, it will be necessary that its policy upon the subject should be changed. The difference between the freight and necessary charges on the article, and the price consumers are obliged to pay for it, is unreasonable. If this difference should be materially lessened, the consumption would be more than proportionably measured and, without question, the net revenue which the Government would derive, would be augmented in the same degree.

You will consequently urge these considerations on the attention of the Minister for Foreign Affairs, in a friendly but not a dictatorial spirit. While we deem it our duty to be vigilant and zealous in endeavoring to promote the interests of our own citizens, we claim no right to prescribe the course to be pursued by Peru. We, however, deem it our duty as a friend to offer our advice, in the firm belief that its adoption will redound to both her immediate and permanent welfare.

You will cause the Peruvian Government to understand that

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these last observations are submitted with no purpose whatever of expressing any doubt of the right of citizens of the United States to visit these islands, as they have, for so many years, been accustomed to do, or relaxing from their demands in that respect. Their only object is, to signify to the Peruvian Government that if that Government would be satisfied to sell the guano there at quite a moderate price per ton, and at that price make the trade open, such a measure would prove the only one which would probably give general satisfaction. And you will please to state to the Peruvian Minister for Foreign Affairs, in the strongest terms, the convictions of this Government that the present policy of Peru is certainly as injurious to her as it is to the rest of the world.

Mr. Miles is well acquainted with Peru, and with the guano trade, and has been at the Islands. He is a gentleman in whom we have confidence, and you will therefore confer freely with him. We despatch him by the first opportunity in order that no time may be lost. You will please return an answer to this letter by him and send him back as soon as possible. On the receipt of that answer all further and necessary orders will be transmitted to the vessel of war on the Pacific.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO JOHN RANDOLPH CLAY, ESQUIRE, &C., &C., &C.

Seizure of Proceeds of Cargo of the Brig Macedonian

Mr. Webster to Mr. Carvallo.

DEPARTMENT OF STATE, Washington, September 2, 1852.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Carvallo, Envoy Extraordinary and Minister Plenipotentiary of Chile, of the 26th ultimo, proposing a reference of the claim of citizens of the United States in the case of the Macedonian to either the King of Holland or the King of Belgium, and embracing the outline of a convention for regulating the points to be considered by the arbiter.

In reply, the undersigned has the honor to acquaint Mr. Carvallo that his note has been laid before the President, who is willing that the King of the Belgians should be the arbiter.

In regard to the convention proposed by Mr. Carvallo, the undersigned has the honor to state that the first article thereof is entirely inadmissible. If there was delay on the part of this Government in presenting the claim to the Chilean Government, this should be ascribed to considerations of policy having reference to the fact that there were other unadjusted claims of United States citizens against that Government, and that, until they should have been adjusted, it was not deemed advisable to bring forward the claim in the present case. As a principal motive for adopting this course was a desire to consult the convenience of Chile, this Government cannot consent to submit to arbitration the question whether or not the claim has been barred by lapse of time.

The undersigned cannot agree to any convention containing a stipulation to submit to arbitration the fact whether the American property captured was so blended with Spanish

property as to make it liable to condemnation. Although he is convinced that the captured property was substantially that of citizens of the United States, it is possible that the house of Abadia and Arismendi, of Lima, who were consignees of the vessel and cargo, may have had a claim thereon for their commissions. If, therefore, the stipulation were to be agreed to as proposed by Mr. Carvallo, the claim must, on this account, necessarily be rejected by the arbiter.

With these exceptions the draft of the convention proposed by Mr. Carvallo would probably be acceptable to this Government, and, if it should be equally so to Mr. Carvallo, the undersigned will be ready on his return from Massachusetts, which may be expected to take place about the first of next month, to sign it accordingly.

The undersigned avails himself of this occasion to offer to Mr. Carvallo a renewed assurance of his very distinguished consideration.

DANIEL WEBSTER.

SEÑOR DON MANUEL CARVALLO, &c.

Appendix

Note

The Speeches in the United States Senate which follow, are chiefly derived from incomplete manuscripts, and the Diplomatic Papers, unlike those which precede them in this volume, have not been obtained from the official Documents and the Archives of the Department of State, but from manuscripts in the New Hampshire Historical Society and other collections. They have therefore been placed separately in an Appendix.

Speeches in United States Senate

The Crittenden Appointment

UNITED STATES SENATE, February, 1829.¹

MR. PRESIDENT: I repeat the remarks made by me some days ago, that in discussing this question, [I] treat it as a matter of principle. I wish to say as little as possible of present circumstances, or of persons now in prominent situations. It is my duty to believe, and I shall cherish the belief, that if this office of a judge of the Supreme Court be left open, the next President will make such a nomination to fill it, as shall maintain the character of that most respectable tribunal, do honor to the President himself, and give a pledge to the country of wise counsel and firm purpose. But any hope of this nature, however strong, would not restrain me from opposing the precedent which we are now about to establish, and which I think to be of dangerous character and tendency. The state of the case, and of the question, is this. A vacancy having occurred on the bench of the Supreme Court, the President, on the 17 Decr. nominated Mr. Crittenden to be judge on that Bench.² This nomination was refused, a proceeding in itself not usual; and on the [twenty-sixth] day of January the Committee reported the two Resolutions now before us. The first of these Resolutions merely declares:

[That it is not expedient to act upon the nomination of John J. Crittenden as a Justice of the Supreme Court of the United States, during the present session of Congress.]³

¹ From a manuscript, in Mr. Webster's handwriting, in the New Hampshire Historical Society. The manuscript is incomplete, but no other report of the speech is known to exist.

² Mr. Crittenden was nominated by President Adams to fill the vacancy on the Bench of the Supreme Court occasioned by the death of Judge Trimble. See *Life of John J. Crittenden*, Vol. I. p. 73.

³ From the Journal of the Executive Proceedings of the Senate of the United States of America.

The Resolution, as is obvious, states no reason or ground of postponement. There is no report of the Committee giving any grounds or reasons. Nothing will appear on the Journals, or among the records, to show, now or hereafter, what are the motives of our conduct. It is necessary, therefore, to refer to what has been stated by the Chairman, and other members of the Committee as the grounds of the Resolution.

And in the first place, it is avowed that the nomination is not to be postponed on the ground of any personal objection to Mr. Crittenden. Every consideration of that sort is professed to be laid out of the case. The postponement is for other reasons.

The gentleman from South Carolina, himself one of the majority of the Committee who agreed to report the Resolution, has stated his own reasons and ground of action to be this, — that after an election, the result of which has shown that public confidence is withdrawn [from] the President actually in office, vacancies occurring in public offices are not to be filled up, unless in such cases as, in our opinion, the public necessity will not allow to be left open.

This is his ground; I so understood it, when I addressed the Senate formerly, and it is admitted that I have stated it substantially as he stated it himself.

The gentleman from Virginia (Mr. Tazewell), considers this rule to be composed of three elements, or qualified by three conditions. In the first place, the offices to be thus left open, must be important offices; in the next place, the vacancies must have happened before the election; and lastly, they must be cases in which the public service, in our judgment, would not suffer by the delay. With these limitations and qualifications, the honorable member professes himself to be willing to act on the rule, not only in this case, but in all other cases, and to commend it, as a proper precedent, to his successors. An honorable member from North Carolina, on the other hand, though he is willing to act on the present occasion in favor of the Resolution, hopes it may never become a precedent. The present exigency, in his judgment, justifies it; but he does not wish to hold it up as an example.

But however gentlemen may differ, either as to a rule fit to govern all cases, or as to their grounds and reasons of conduct in this particular case, they all agree in one thing, and that is, that the sole object of this Resolution is to take away the appointment from the present administration, and give it [to] its successor; there is no disguise, nor concealment. The purpose is

professed, avowed and justified. That the office has been long vacant, is admitted; that the gentleman nominated to fill it is every way worthy of the situation, has not been denied nor questioned; still, the nomination, it is said, is not to be acted upon, because we prefer to give this nomination to the new administration; and to that end, we keep the office open till the new President shall come in.

Now, sir, with whatever plausibility this may be defended, I esteem the principle of it extremely objectionable. Let it be remembered in the first place, that this is not an executive office.

Remarks on Nominations to Cabinet Positions¹

THAT before taking the question, he had a few remarks to make, such as the present condition of things seemed to him to render necessary. These remarks applied, or would apply, to other nominations to those offices, which are commonly called Cabinet Offices, as well [as] to this nomination. In regard [to] these offices, Mr. W. said his opinion was that, as a general rule, a choice should be left to the President some what freer than belonged to other cases. Persons filling those offices were co-operators and confidential agents of the President. The Laws creating these Departments had made it the duty of the respective Secretaries to execute such directions as the President should give, in relation to the business of their Departments. In this particular, they stood on a different footing from Judges, and other officers, the whole of whose duties were prescribed by law, and were entirely independent of the President's directions, or Executive will. He should vote, therefore, for this nomination and probably for those of a similar nature, which were to follow; but in doing so he considered himself as assuming no responsibility; nor as giving his approbation of the manner in which the Cabinet, as it is called, was to be formed. He considered the whole responsibility, in this respect, to rest with the President; and he thought he should best fulfil his duty in leaving the President to the uncontrolled exercise of his official discretion, and to the undiminished weight of his official responsibility —

Mr. C. concurred in the sentiments expressed by Mr. W.

¹ From a manuscript, in Mr. Webster's handwriting, in the New Hampshire Historical Society. It bears no date.

Notes of a Speech on the Compromise Bill

UNITED STATES SENATE, March, 1833.¹

MY own situation unexpected. I think opinions are advanced, and measures proposed, tending to surrender, or to endanger, a great practical power of the government.

Under circumstances likely to give it a favorable reception.

No zealot for forced protection. Went with Massachusetts in 1816 and in 1821.

Reason for woollen bill in 1827 — Bill of 1828.

I have never wished to do more, than to fulfil the provisions of 1824.

The power, always in the constitution.

A bill is now proposed as a compromise. It is brought forward by those leading gentlemen, on the side of protection.

It is seconded by the leader of those who held the whole power

¹ Niles' National Register, February 1, 1840; reprinted from the New York American. On January 20, 1840, Mr. Charles King wrote to Mr. Webster, respecting the notes which the latter had given him long before, expressing an urgent wish that Mr. Webster would write out the Speech for publication. To this communication Mr. Webster sent the following reply:

NEW YORK, January 20, 1840.

DEAR SIR,—I have received your letter, together with the notes of my speech on the Compromise bill, which have been so long in your possession. But I doubt the expediency of my revising those notes, or attempting to put them into the regular form of a speech. It might be thought rather a Speech of 1840, than the speech of 1833.

The notes, however, are yours, and you may make any use of them which you think proper; but if they should be published, or any part of them, as notes made by me, I wish them to be published without any alteration whatever. It will be understood that what is published is not a speech, but heads or notes for a speech.

Yours respectfully, DANIEL WEBSTER.

The notes were then printed precisely and literally as when first placed in Mr. King's hands, with the following heading:

An exact copy of the original notes from which Mr. Webster spoke in opposition to the Compromise bill, March, 1833.

Gales and Seaton's Register of Debates gives a brief abstract of remarks by Mr. Webster, March 1. The Compromise Bill passed the Senate on the following day. The Register has a fuller report of a Speech on Mr. Clay's measure, delivered by Mr. Webster on February 25. See Speeches in Congress Hitherto Uncollected, pp. 160-165.

unconstitutional — who propose to annul the laws of congress on that ground.

Under these circumstances, it cannot be improper to see on what grounds this compromise is to be made.

As the measure proposes to extend through many years, does it bind, or attempt to bind, the discretion of congress hereafter.

Does it contain any stipulation, or pledge, or any thing intended to be, or which may be regarded as a stipulation or pledge, that *this act* of congress shall not, at all times, be as much subject to be repealed, by a majority of both houses, as any other act?

Does it purport to prescribe the duty of the legislature in time to come.

As the question which has hitherto divided those who now come forward with this compromise, is a *constitutional question* — in what manner is *this* compromised?

Does the compromise leave the constitutional power untouched and entire? without stipulating to forbear its exercise, at any time hereafter, or does it surrender the constitutional power, or stipulate not to use it — or give a pledge, or create an argument, founded on faith and promise, not to use it hereafter.

These are questions touching the general character of the measure.

I. I think that there is a plain attempt to restrain the discretion of future legislatures.

Sec. 3. Four first lines. These have no effect whatever, except as a declaration, *that this law shall not be repealed*. That must be taken to be their *purpose*, as they have no other effect. They are equivalent to saying, “this law shall not be repealed.”

Add to this, the proviso, at the end of the 5th section — and the whole proviso, *in the 6th section*.

These all, either impose, or imply, restraints upon congress in future.

The effect of the whole act is this.

All duties over 20 per cent. *ad valorem*, shall by a series of reductions, be brought down to that amount.

These are duties on the *protected* articles.

They shall reach that point, Dec. 1842.

From that time the duty may be diminished, on all articles, below 20 per cent. — but not raised above it.

Before that time, rates less than 20 may be altered, by raising or lowering — provided, always, they are kept below 20.

There is, then, no discretion allowed to congress at any time hereafter, to raise any duty higher than 20 per cent.

It may lower duties on some contingencies.

It may vary them, on others ; still keeping them below 20 per cent.

But it cannot, in any state of the country, in war or peace.

On any article of luxury, raise a duty above 20 per cent.

This appears to me *most extraordinary* legislation.

What will be our condition in 1842.

We shall be under the influence of this restraint.

Our hands will be tied. We can impose no duty higher than 20 per cent.

II. Does the bill surrender, as far as such a measure can surrender, the constitutional principle.

I think it does.

1. The words in the 3d § can have no meaning but as a pledge, that duties shall be laid *with no regard to protection*. Their immediate author admits them to be immaterial, as words of *enactment*. — They express *only opinions*. Opinions may be expressed in resolutions, not in laws.

We cannot *enact* opinions.

It is said gentlemen on the other side do not consider them *as a pledge*. Their *silence* is eloquence.

They do not halloo till they are out of the wood. *They are a pledge*. They are intended to be so, and will be so regarded.

2. Specific duties, and *discrimination*, are both abandoned, as to all protected articles.

It is said may be used, under proviso in § 5. But these are *unprotected* articles.

As to all protected articles, therefore, discrimination is given up. Now, this is just what South Carolina has contended for.

All her late papers insist on this, *and it is here surrendered*. It is just the exact reverse of the whole doctrines of Mr. Clay heretofore.

The compromise, then, is a surrender, on one side, of the permanent principle ; and an allowance, on the other, of a few years longer enjoyment.

For a poor lease for 8 years, we surrender the inheritance.

We say to South Carolina, "sacrifice your temporary interests, and we will sacrifice our permanent principles."

Give us an annuity — pension us — put us on half pay for 9 years and we will surrender the constitution.

You insist there shall be no discrimination. You insist on an equal *ad valorem*. Let us enjoy our present advantages 9 years,

and we will consent that *your construction shall be engrafted on the constitution.*

Massachusetts will not make this surrender.

What will be our condition in 1842? A laughing stock to all nations. *A theme for all the poets-laureate in the monarchies of Europe.*

An admirable example of the power of self-government.

States surrendered power to congress. Congress manacled itself!

A spectacle to all nations.

1. We cannot make commercial treaties —

2. We cannot countervail foreign legislation!!

Suppose we had applied a similar principle to our navigation, *at any fixed rate*, we should not have had a ship in *any English trade.*

If we were under a colonial system, would our condition be worse than this.

 *A conqueror could not well leave us less masters of our own legislation.*

DISCRIMINATION is every thing, *in all countries.*

Prohibition — impracticable.

Free lists — inadequate.

Mere incidental protection from equal *ad valorem*, nothing.

Mr. C. always argued so.

Discriminating and specific duties are the whole substantial power.

I am asked, “what will I do, when discrimination will not suffice?”

I answer — We can do no more.

But that is enough. It will accomplish all our purposes.

We cannot protect things essential to national independence.

Gen. Smith's amendment.

Where do we get the power, to *impose these restraints?*

We are *agents*, not owners.

Public servants, not proprietors of the constitution.

This bill the last will and testament of the 22d congress.

The answer always is, this bill will be repealed before 1842.

The country will not tolerate it.

Then, why pass it?

But, who will repeal it? Will gentlemen themselves?

After they have enjoyed its benefits for nine years, will they stand up to repeal it, just at the time, when the enjoyment of the other side commences?

They cannot well do it.

They say, "the south will see the folly of it, and consent to the repeal." This admits it to be unrepealable, *except by consent — to be a compact.*

Practical difficulties. 20 per cent. on the value.

What is the rule of value? Cotton.

1. Does it supersede the *minimum*.

2. Does it act on the minimum value.

3. Does it adopt value, according to § 7, of 1832, and consider minimums or duties. Different results.

Cloth at 8 cents a yard.

In 1 case, duties less than 2 cents a yard.

In 2 cases, " " 6 1-2 do.

In 3 cases, " " 5 1-5 do.

Which is right?

Iron. What rule of value? Is law practicable?

Sugar. Not a fraction of a cwt. and not 2 years, but a variation on every invoice.

Practical operation.

1. *As a measure of finance, objectionable*; because diminution of duties, in some cases, will increase revenue.

Bring articles now at 30, down to 20, it will increase revenue.

READY MADE CLOTHING — BOOTS AND SHOES, &c.

Spirits.

As a measure of public policy, it subjects us to foreign legislation — restrains us in our means of self-defence.

As to effects on particular interests.

1. Cottons. It will destroy all printing establishments — *Lowell memorial* — read.

2. It will break up all small capitalists in the cotton business.

Mr. Lawrence, Mr. Otis.

II. Woollens. It will destroy this branch of business, 20 per cent. on *wool*, and on woollens; destroys both.

Long before 1842. This business will sink.

It is just as well to make it free at once. It will be a *doomed interest* — Its destruction forever. And it must sink.

In this respect, the bill is an entire abandonment of the whole system.

Immediately the less substantial establishments will fall. A rush into other branches will follow.

The ruin of the woollen interests, is the ruin of the *wool growing interests.*

Iron. Coal. The middle states — Glass. Sugar.

 *The artizans — the adze lists, &c.*

And why is this surrender made? What will *be the effect*. Is not the effect to give nullification a triumph, over the protecting system.

The triumph over the manufactures is not to be completed in 9 years.

Over the constitution and laws, it takes place at once.

How is this expedient, since Mr. Clay has found out, since the beginning of the season, that South Carolina means nothing *but a law suit*. All this sacrifice is to be made, then, not to avoid civil war, but a war of processes.

This measure can give no permanent peace.

The country will not acquiesce in it.

An attempt will be made, at next session, and at every session, to break up this compromise, and to relieve the constitution and congress from their shackles.

They will feel bound to undo it.

Will Pennsylvania consent to see this work of destruction to her interests go on? *Never*.

She will make perpetual war against it. So will all the wool-growing country. So will all the country of free labor.

Remarks on a Resolution of Inquiry relative to Pensions

UNITED STATES SENATE, May 29, 1834.¹

MR. WEBSTER said — I suppose no member entertains the slightest objection to the resolution of inquiry introduced by the Hon. Senator from S. C. & on which he has submitted some

¹ From a manuscript in the New Hampshire Historical Society, bearing the following endorsement:

“ ‘National Intelligencer Office,’ June 10, 1834. ‘The Reporter would thank Mr. Webster to revise at his leisure, the enclosed notes of his remarks on Mr. Preston’s resolution in relation to the Pensioners of the Revolution.’ ”

The Speech is not in Mr. Webster’s Collected Works and occupies but thirty lines in Gales and Seaton’s Register of Debates. It is presumable that the notes were never revised. Mr. Preston had offered a resolution calling upon the Secretary of War to report to the Senate a statement showing the names of the several pensioners, the sums they had received, together with other information, and had addressed the Senate, for the purpose of showing that the number of pensioners on the books was far greater than the number of survivors of the Revolutionary War, according to all the tables of longevity and all statistical principles.

remarks. If there be any fraud or any mistake in the Administration of the Pension Laws, then it is necessary that an inquiry should be gone into. The course pursued by the Hon. Member is, no doubt, the correct one, to ascertain facts upon which reform sh^d be attempted. But, Sir, while I entirely concur in the propriety of obtaining or seeking the information for which the gentleman's resolution provides, I think it proper to repeat the suggestion which I made the other day — that the state of facts upon which the gentleman reasons, do not conduct me to the same results in regard to these disproportions at which the Hon. Member seems to have arrived. He has shown great apparent disproportions between the population of each State & the number of pensioners they contain — And, to enhance this disproportion, he expresses the opinion that although the number of pensioners be less than they sh^d be in the South in proportion — that it sh^d be the other way, inasmuch as longevity is greater South than in the North. Now, I will show the Hon. Gentleman that it is impossible that the disproportion which he says exists, can have resulted from fraud. We may suppose frauds in this or that part of the Country.

is wholly incredible. —

Whatever disproportion there may be
result in mistake

cannot
such a result.

We must look to other causes, & it seems to me there are
other causes —
relief. —

demanding immediate

— I think the whole matter is entirely
explained by reference to two considerations — *First* — a very
great inequality in proportion to the services rendered by the different States — and, secondly — a great change in the population
of the States, since the revolution, & it
from different causes

arising

& therefore bringing a new
population into the States —

not equally likely to swell the amount of the Pension roll
of that State.

And, in the same spirit of liberality
& candour — — —

amount of persons employed in the revolution.

The Gentleman has shown a
disproportion in the several States; & before any thing can be
shown in the shape of fraud or error, we must first ascertain as
the primary element in the character of — — —

population that bore arms — — —

& that each

State furnished as many fighting men in proportion, or nearly, to — — —

Now, that was not the fact; not that there was any want of public spirit, but arising from circumstances connected with local considerations. And, Sir, the Army returns for the first year of the war to the last, will show the fact conclusively; & so inconsiderable is that disproportion that I confess the statement made today by the Hon. Member does not surprise me at all.

Now let us look at the result which he draws from a comparison — — — two contiguous States, Massachusetts & N. York — The gentleman's argument is — that Massachusetts had four times as many fighting men as N. Y. & therefore N. Y. ought not to have so many men on the pension list four fifths State of N. York.

There is not a fact in the whole range of statistics more easy of explanation.

And what is strange. —

well known causes. That if any other result than this had appeared, it w^d have excited surprize — What is N. York? — How comes it that N. Y. which produced so small a proportion of fighting men, now has so many more pensioners than Massachusetts? N. Y. during the revolution was not to be compared to Massachusetts. — What has created the population of N. Y.? is the answer to the whole of it — a portion of the Western District of N. Y. was settled by those who went from Massachusetts after the peace of '83 — The fighting men of

rushed into N. Y. after the peace . . .

Lord Chatham's war — after the peace of '63. After that year a portion of New Hampshire &c.

Indian alliance — — — after the surrender of Canada to the English — The soldiers who had been employed in that war then poured into the Western part of the State of N. Y. — so that the population there is made up, not altogether of those who had served in the army of the revolution, but by an accession from that part of the country which furnished the most fighting men — If any one supposes that the pension roll exhibits any thing like the number during the Revolutionary war.

— Vast numbers went from New Hampshire, Connecticut & Massachusetts to the Western part of N. Y. And it seems to me that before we can attempt to show fraud — it seems to me that we ought to lay down computation of the number that

served in the regular army or the Militia — Does not the amount of the population itself

So much for the change. — We are then to inquire how the excess of population has come.

Now with respect to V^a — the fighting men of that State alive are but few as the Hon. gent. states. But whence came those who are now on the pension list, & inhabit Kentucky & Ohio? Why, they furnished no troops during the revolution: they are, therefore set down to the parent States from which the population arose.

— I make these remarks only to show that the essential elements of calculation &c.

Vast number of men actually employed in the militia service of the respective States. — Secondly, the sources of augmentation of those States which have enlarged their population.

— If I c^d have foreseen these . . . I w^d have furnished an estimate of the number of troops belonging to Massachusetts who served in the revolutionary war, & there can be no doubt that there were more in proportion to her population from the year '75 to the Surrender at Yorktown — The first thing that sh^d be done in order to detect fraud, is to ascertain the number of men who bore arms in the regular army & the militia. I concur with the gentleman in adopting the inquiry.

Diplomatic Papers

The Northeastern Boundary

*Mr. Webster to Theophilus Parsons.*¹

WASHINGTON, Jan. 28, 1841.

MY DEAR SIR, — There can be no objection to any temperate, tho' firm, expression of opinion, by our Legislature, on the Boundary question. Yet, it behooves us to consider what the present state of the subject is.

By the Treaty of Ghent, it was admitted & acknowledged, that the question of the N. E. Boundary, was a question, on which the two Governments might not agree; & it was stipulated, in the treaty, that in that event, the question should be made matter of arbitration, by a friendly Power, — an arbitration was had — the arbitrator decided — but his decision satisfied neither party, & both rejected it. The parties, then, as it seemed, were referred back to the stipulation in the Treaty, & were to try another arbitration. A negotiation, preparatory to such other arbitration, is now in progress between the two Governments, but has not, as yet, terminated in a Convention. This is the actual state of things.

It might have been better to have avoided the necessity of this second arbitration, & to have proposed a line by compromise. — In my opinion, that might well have been thought of. But no such attempt was made, on either side. The negotiation for exploration, arbitration, &c., must go on, unless something occurs to break it off, till a convention shall be concluded.

The real ground of complaint is the dilatoriness of the proceedings, & the consequent postponement of the final adjustment. On this point, a Resolution, in proper terms, but with a firm tone, might be useful, & certainly would be proper.

¹ From the draft, in Mr. Webster's handwriting, New Hampshire Historical Society.

I do not see, therefore, on the whole, that the proposed Resolutions can do more than,

1st. To express a strong sense of the right of our side of the case; & 2nd.

2. To complain of delay, & urge the high importance of hastening the negotiation to its close.

I have not yet seen the Governor's message, but you will perceive, by what I have written, that I concur in the views which you express. We must avoid alarming the Country with the fear of rupture, at the same time that we assert our rights firmly, express proper confidence in our own Govt. — & urge the importance of an early settlement of the dispute —

Yrs with great regard.

*Mr. Webster to His Excellency Edward Kent, Governor of Maine.*¹

WASHINGTON, Feb. 23, 1841.

DEAR SIR, — Mr. Randall has handed me your letter. The subject of the North Eastern Boundary will undoubtedly attract the President's attention among his first duties.

You must be aware of three things —

1st. That the two governments have agreed to settle this question by means of a joint commission, with an ultimate umpirage.

2d. That they have agreed that the negotiation of a convention for the completion of this arrangement shall be conducted in *Washington*.

3d. That the basis of such convention is already agreed upon, and that only some matters of detail remain unsettled.

In this state of the case, it will be the duty of the new administration doubtless to hasten the steps of the parties in concluding the convention, as far as may be, consistently with propriety; but I do not see what else is to be done, unless we say at once that we will break off the negotiation and resort to force; a step, I am sure, for which the country is not prepared.

It is to be recollected that Maine, constantly declining compromise, has insisted, unwaveringly, on the ascertainment of the absolute right of the case. To comply, in this respect, with what she has so strongly persisted in, the arrangement now in progress was entered into as being obviously the only mode of ascertaining that right, and as being, also, in strict compliance with the stipu-

¹ From the Life of Daniel Webster, by George Ticknor Curtis. For Governor Kent's letter to Mr. Webster, see *ibid.*, Vol. II. pp. 59-60.

Theophilus Parsons

Etched by S. A. Schoff



lations in the Treaty of Ghent. Under these circumstances, it seems reasonable that nothing but unpardonable delay on the other side should induce the Government of the United States to take any measures, except such as may be calculated to accelerate the completion of the convention.

I should be very sorry, and am sure the President and the whole administration would be sorry, to see any new excitement getting up on this delicate subject. You are aware that nothing can be more dangerous than popular excitement without a definite, as well as a just object. As things now stand, excitement can have no effect but to create counter excitement, and probably delay still further the object of all parties, that is a pacific and an immediate adjustment of the controversy.

I beg you to understand that this letter is written as a private letter, without consultation with any individual whatever.

The suggestion in your letter which relates to a distinguished public man and friend of ours shall be respectfully communicated to the President in due time.

I have the honor to be, with great regard, your ob. Serv.

*Mr. Webster to Governor Kent.*¹

WASHINGTON, Decr. 21st, 41.

DEAR SIR,—I have this morning rec^d your private letter of the 15th inst. Its contents are important.

I may say to you the negotiations for a Convention to settle the Boundary Question can hardly be said to have made any positive progress, since last year.

Mr. Forsythe's counter project, deliv^d in Aug. 1840, rec^d no answer until just before L^d Palmerston went out of office, in Aug. 1841. It was then answered, & this answer has revived the subject, & other correspondence will ere long take place between the parties. The interest of both parties undoubtedly requires a compromise, & I have no doubt that the position which Maine has assumed is the only obstacle to bringing such compromise about. The English Gov^t cannot treat with us about a compromise, unless we say we have authority to consummate what we agree to; & although I entertain not the slightest doubt of the just authority of this Gov^t to settle the question by compromise, as well as in any other way, yet in the present posture of affairs,

¹ From the draft, in Mr. Webster's handwriting, New Hampshire Historical Society.

I suppose it will not be prudent to stir, in the direction of compromise without the consent of Maine. I am very glad to learn that it is probable that your land agent will give some accurate idea of the value of the land North of the S^t Johns.

Suppose England should be willing to *pay* for the land north of the River, & leave the question of its navigation to be settled hereafter? Or suppose she should be willing to let our line run from the monument to the mouth of Eel River, & then up the S^t Johns, & so through the Lakes?

I should be very glad of your thoughts, on these & on all other points; but incline for the present to think with you, that perhaps the easiest mode of getting the parties together for a compromise may be the creation of a commission.

I hope this may be done this session of Congress —

Yrs truly

*Mr. Webster to Hon. Reuel Williams, Augusta, Maine.*¹

WASHINGTON, Feb. 2^d, 1842.

DEAR SIR, — Recalling the conversation which passed in the Department between Mr. Evans & yourself, & me, & also the short interview which I had with you at the President's, I now beg leave to address you, on the important subject of those conversations.

Lord Ashburton may be expected in this Country by the first of March, fully empowered & instructed to discuss & settle, definitely every subject in controversy between the United States & England. At the head of this list stands the dispute covering our North Eastern Boundary, & I suppose this will be entered upon, immediately upon his arrival.

You are aware that a negotiation had been going on between Mr. Forsythe & Mr. Fox, for many months, before the late change of administration. In the progress of this negotiation, the parties had arrived at an agreement for a joint Commission, with an ultimate reference to arbitrators, appointed by the Sovereigns, or Heads, of other Governments, in case a necessity for such arbitration should arise. On several matters of detail the parties differed, & appear to have been interchanging their respective views & opinions, projects & counter projects, without coming to a full [final] arrangement, down to Aug. 1840. Various causes, not now

¹ From the draft, in Mr. Webster's handwriting, New Hampshire Historical Society.

necessary to be explained, prevented any further considerable progress, since that period.¹

It seems to be [have been] understood on both sides, that one arbitration having failed, it is [was] the duty of the two parties to proceed to institute another, according to the spirit of the Treaty of Ghent, & other Treaties; and [I suppose, that] unless some new course be adopted the pending negotiation will be immediately pressed to its conclusion.

But I think it highly probable that Lord Ashburton will come prepared to agree to a *conventional line* of boundary, on such terms, & conditions, & with such compensation, as may be thought just & equitable. It is the conviction of the high probability of this, (although we have no authentic information to that effect) that leads the President to desire that the attention of the Government of Maine should be immediately & seriously turned to this subject, with a view of considering whether it might not be useful for that Gov^t to make itself, to a certain extent, & in a certain form, party to the discussions & conclusions, which may be had between the Gov^t of the United States & that of England. The Treaty for a conventional line, if one should be agreed upon, must of course be between the United States, & England, & could be submitted for ratification only to the Senate of the United States. But agents or commissioners of Maine might represent her interests & wishes, in the negotiation, with an understanding that no exchange of Territory, or other proceeding to make a new line by agreement, would be adopted without their express assent. These Commissioners would of course correspond with their own Governments, and as they would be possessed of the fullest local information, & well acquainted with the interests, sentiments, & wishes of the People of Maine, an arrangement entered into with their consent, if happily such an arrangement could be made, would be likely to give satisfaction.

I pray you to have the goodness to confer on this subject with Gov. Fairfield, & other Gentlemen, & learn their opinions. You will see that time presses, as I suppose the Legislature of Maine will adjourn in a month. It was deemed of so much importance that this subject should be brought under consideration in Maine,

¹ The following words are here interlined, in Mr. Webster's handwriting: "Arrested the progress of the negotiations at that time, & no further progress has since been made in it." They should be read after the word "explained" in the second line, if substituted for the rest of the sentence. The brackets printed in this letter occur in the draft.

that, with the President's approbation, I have concluded to write to some Gentleman of high character in Maine, inviting his attendance here immediately, to confer upon the means proper to be adopted, & should probably have addressed myself to Chief Justice Weston. But as you are now on the spot, it has been thought better to communicate with you, in the first instance. If you, & other Gentlemen should be of opinion that it w'd be useful that a suitable person should come here, at once, to confer with the President, & this Department, more freely & fully than may be done by correspondence, we should be very glad to see him; & though I have great respect for Judge Weston, founded on long acquaintance, yet if his engagements will not allow him to visit us, any other Gentleman will be agreeable whom Gov. Fairfield & yourself may select.

It is our purpose, to put the question, in the fairest manner to Maine, whether she will consent to be satisfied with a conventional line, & all its terms & conditions, which Commissioners of her own appointment shall have approved. And it is but candid to say, that for many reasons, some of which are obvious to all, no negotiations for such a line will be opened, or entered upon, without an express previous consent on the part of Maine, to acquiesce in any line, with all its terms, conditions, & compensations, which shall have been thus previously approved. I hope the Government of Maine will think favorably of what I have now suggested; since it is my opinion, that in all probability, five or six years will elapse before the line of the Treaty of 1783 can be ascertained, run, & marked, by proceedings under a convention for a joint commission, & an ultimate arbitration. It will be our duty, however, to press the conclusion of such convention as soon as practicable, unless the Government of Maine should think it compatible with the honor & interest of the State to concur in measures for an earlier settlement of the whole question.

Allow me to hope for an early acknowledgment of the receipt of this communication.¹

¹ Mr. Williams replied to this letter on Feb. 9, stating that he had shown it to Gov. Fairfield and would make further inquiries. On Feb. 12 he wrote the following letter to Mr. Webster, which is printed from the original in the New Hampshire Historical Society.

"Since writing you some days ago I have endeavored to ascertain what may be expected from the Legislature of Maine in reference to the boundary question.

"The points of honor, and consistency on the part of the Legislature, are in the way of arriving at what might be satisfactory to both countries.

"Maine is confident of the justice & validity of her claim as advanced & insisted

upon by her, & has no wish to change the Treaty line. Still I believe she would release to Great Britain such portion of the territory in controversy as the convenience of the latter may require, on an offer of other territory in exchange, or any other suitable equivalent.

"In her view, Great Britain has interposed an unwarrantable claim to a portion of her territory, & has taken & now holds part of it by military force.

"To open the way to a friendly adjustment of the question, it would seem that Great Britain should first withdraw all military occupation of the territory in controversy & then a proposition from her for an exchange of territory and equivalents would be met & carried out by Maine in a friendly spirit.

"Aware of the difficulties urged by the government of Great Britain as standing in the way of her proposing a conventional line and equivalents to a party not authorized to agree to & establish such a line, the members of the Legislature, as well as the governor of Maine, as far as I can ascertain, would agree to any course which can be honorably adopted to afford the parties an opportunity of understanding the objects and views of each other, & of arriving at a settlement of the long pending question of boundary, if possible, without resort to arbitration, indicated by the last, as well as the present administration, as the only remaining course to be adopted.

"If the information possessed by the general Government would enable you to propose to the Governor of Maine, or the Legislature, a specific line of boundary; yielding to Maine territory, privileges of navigation or other benefits equivalent to the territory which might be yielded to Great Britain, in lieu of the line described in the Treaty of 1783, it would be well received, & acted upon by the Legislature as the general government might justly expect from one of its members.

"If that cannot be done, then I think that an appeal to Maine, as indicated in your letter, would receive grave consideration, & be acted upon with a strong desire to adopt the measure, if it shall be deemed consistent with the honor and just pretensions of the state.

"Suggestions are made by some that although Great Britain has heretofore proposed to treat for a conventional line, *it is not known* that Lord Ashburton will be so instructed, and that if Maine should authorize commissioners to consider & agree upon a conventional line & its terms, & then learn that no such line or terms were to be *proposed by England*, Maine would then be placed where no American could wish to see her placed.

"While I have thus given you the views of the dominant party in Maine, as fairly & full as I can, it should not be forgotten that much will depend upon the course of the Whigs. Neither party, as such, will be inclined to encounter the united efforts of the other upon this great question. If the Whigs shall, as I think they will, sustain a reasonable proposition from the general government for authority to settle the question upon just grounds & with proper limitations it seems to me that the object may be attained; but I speak from appearances & not from authority. The Legislature propose to adjourn about the first of March."

*Mr. Webster to the Massachusetts Senators.*¹

WASHINGTON, Feb. 15, 1842.

DEAR SIR, — I enclose herewith a copy of a letter addressed by me, on the 2nd instant, to Mr. Williams, one of the Senators of Maine, now on a visit to his own residence in Augusta, & to which I beg leave to call your attention.

In the settlement of the Boundary question, Massachusetts has an interest as well as Maine, inasmuch as a moiety of the public lands lying in the latter states belongs to her. The right of Territorial Sovereignty, however, is exclusively in Maine; & it is this consideration, I presume, which has caused something more of excitement & concern in the question to be experienced in the one State than in the other. But the interest of Massachusetts is not to be overlooked; & it is for that reason, that I now address you. You will see the suggestion, which I have made thro' Mr. Williams, to the Gov. of Maine, & I now submit the same proposition to the consideration of the Gov^t of Massachusetts.

If a conventional line be agreed on, it very probably may be upon conditions, which, while perhaps generally useful to the whole country, & highly important to Maine, may be of less positive advantage to Massachusetts. That this may be so you will readily perceive when you consider what those conditions may be which shall be proposed. And yet, I suppose, that Massachusetts, anxious for the settlement of so distressing a question, & finding her own interest reasonably provided for, would not interpose any objections, founded on narrow considerations.

Under those general views I submit to you the propriety of considering the proposition, which I have communicated to His Excellency, Gov. Fairfield, as a proposition which may be fit, to be acted on, by the Gov^t of Massachusetts. I entertain no doubt, whatever, that Lord Ashburton will bring with him full powers to settle the Boundary Question by agreeing on a Conventional Line. He may be expected here, according to my information, in less than a month. As yet, I have no answer from Mr. Williams, further than that he has rec^d my letter, has shown it to Gov. Fairfield, & other Gentlemen, & that he will write me again soon. I shall communicate to you, in confidence, all that I hear,

¹ From the draft, in Mr. Webster's handwriting, New Hampshire Historical Society. It is endorsed, on the back, "Mass. Senators — on the subject of the Maine Boundary."

and as soon as I hear it, from that quarter. It may, perhaps, be as well for Maine to take the lead, if anything is to be done; (tho' of that you will consider) and if the Gov^t of Maine should think favorably of the suggestion, & act upon it, the Gov^t of Massachusetts will decide whether it will adopt a similar course.

I should be glad to hear from you, at your earliest convenience; & am with the most sincere regard,

Yours

D. W.

*Mr. Webster to Hon. Reuel Williams.*¹

WASHINGTON, Feb. 18, 1842.

MY DEAR SIR, — Your letter of the 12th was recd. yesterday. The disposition which appears to animate Gov^r Fairfield, & the other Gentleman with whom you conferred, is such as to give hope, I think of favorable results. Nothing is more earnestly desired by the President than to terminate the Boundary controversy in a manner honorable, satisfactory, & useful to Maine, & to the whole Country.

You remark that it is suggested by some [here mark, as quoted on page 3 "that although" &c to the words "her placed."] ² I have no further information to give, as respects Lord Ashburton's instructions. All we know is, that Lord Ashburton informed Mr. Everett that Lord Ashburton would be clothed with full powers to discuss, & definitely settle, all questions pending between the two Governments.

I have no doubt, whatever, that his instructions will give him the fullest authority to agree on a conventional line. But if Gov^r Fairfield & other Gentlemen think that more positive assurance on that point is necessary, before any step be taken by Maine, then of course nothing can be done before the Minister's arrival. It may be proper to take this view of the subject, & it would not become me to make any objection; altho' for my own part, I should have preferred that a different view might have been taken.

I regret that Gov. Fairfield & his friends should be of opinion that any points of honor & consistency, on the part of the Legislature are in the way of arriving at what might be satisfactory to both Countries. It is true that Maine is confident of the justice

¹ From the draft, in Mr. Webster's handwriting, New Hampshire Historical Society.

² See the ninth paragraph of Mr. Williams's letter, page 599.

& validity of her claim, & certainly I think this a well founded confidence. But it is equally true that England has evinced, on her side, no less confidence. Maine thinks that England has interposed an unwarrantable claim to a portion of her Territory, & the Gov^t of the U. States thinks that Maine, in that opinion, is entirely right; but England asserts, on the other side, that the U. S. & Maine have interposed an unwarrantable claim to a portion of her Territory; & these conflicting opinions, & assertions of right must be, in some way settled & adjusted. It is true that England occupies or protects a part of the disputed Territory by an armed force; but it is equally true that the United States occupy & protect another part by an armed force also, and this last force was placed in position, at the request of the Gov^t of Maine. Indeed, if I remember correctly, Maine assented, in the year 1839, that the question of possession should remain as it then stood; that is, that Great Britain should hold one part, Maine not acknowledging her right, & that Maine should hold another part, England not acknowledging her right. The spirit & general principle of this understanding between Maine & the Gov^t of New Brunswick has governed the conduct of the Gov^t of the United States, in all subsequent measures respecting the possession of the disputed territory; the principal alteration, that of substituting U. S. troops, for the posse of Maine having been adopted, as I have already said, at the request of Maine. I make this remark, My Dear Sir, with no other view than that of expressing the hope, that on more reflection, & upon full consideration of all the circumstances, the Gov^t of Maine may not find any obstacle, founded on considerations of honesty & consistency, from concurring, in the manner suggested in my letter, in a proceeding, having in view the establishment of a conventional line, if the British Minister should in fact bring with him proper authority for such a purpose.

I am my dear sir, with true regard, Your obedient servant.

D. W.

*Mr. Webster to Albert Smith*¹

DEPARTMENT OF STATE, WASHINGTON, March 17th, 1843.

ALBERT SMITH Esq^{re}, Portland, Me.

SIR: I have the honor to inform you, that the President of the United States has appointed you with the advice of the Senate, Commissioner on the part of this Government, for the purpose of

¹ From a copy, in the New Hampshire Historical Society.

running, tracing and marking in cooperation with a commissioner to be named on the part of Her Britannic Majesty's Government, certain parts of the Boundary line between the United States and the British Possessions in North America, according to the sixth article of the Treaty of Washington of the ninth of August last; which stipulates "that for the purpose of running and tracing those parts of the line between the source of the St. Croix and St. Lawrence River which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two Commissioners shall be appointed, one by the President of the United States, by and with the advice and consent of the Senate thereof, and one by Her Britannic Majesty; and the said Commissioners shall meet at Bangor in the State of Maine, on the first day of May next, or as soon thereafter as may be and shall proceed to mark the line above described, from the source of the St. Croix to the river St. John, and shall trace on proper maps the dividing line along said river, and along the river St. Francis to the outlet of the Lake Pohenagamook, and from the outlet of the said Lake they shall ascertain, fix and mark, by proper and durable monuments on the land, the line described in the first article of this treaty; and the said Commissioners shall make to each of their respective Governments, a joint report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps certified by them to be true maps of the new boundary —"

A particular description of this line of boundary is contained in the first article of the instrument above referred to — It is in the following words; viz.¹

A copy of the recent Treaty with Great Britain, — of the act of Congress of the 3d instant for carrying it into effect, and a transcript of the map prepared by the late American Commission for Exploring and surveying the Boundary line between the State of Maine and New Hampshire, and the adjoining British provinces will be delivered to you with this letter.

The Articles above cited of the Treaty of Washington, together with the provisions of the Law to carry it into effect, will form the basis of the operations of the Commissioners in ascertaining and marking the line of Boundary as therein described and as it is now to be definitely settled.

¹ Here follows Article I. of The Treaty of Washington from the words "Beginning at the monument," second line, to the end of the Article. See Diplomatic and Official Papers, Collected Works.

As the day named for the meeting of the Commissioners is the first of May next, it would perhaps be well to repair to Bangor a few days previous to that time, in order that every practicable arrangement may be made on your part to facilitate the entrance of the Commission on field duties as soon as possible after the arrival of the British Commissioner and his suite. Upon yourself, jointly with that officer, will devolve the duty of conducting the proceedings of the party, of instructing the Engineers and Surveyors on both sides as to their actual operations in the field, and of assigning to the clerks the duties properly appertaining to their office.

If any question should arise from conflicting views between yourself and the British Commissioner, you will carefully investigate the grounds of your own opinions and when fully convinced of their correctness, and of the fairness of the claims which they may induce you to maintain on the part of the United States, you will press their adoption by every proper argument drawn from the letter and spirit of the provisions of the Treaty.

As it would be inconsistent with the established principles of the Gov^t to advance any pretensions on the part of the United States not founded in strict fairness and Justice, it will be equally essential not to admit on the part of Great Britain any claim not maintainable on the same principles —

Experience has shown the frequency of conflicting views, and of the existence of doubts and uncertainty, as to the exact meaning of treaty stipulations, which a resort to the supposed intentions of the negotiators has but seldom assisted in removing; especially with reference to a territory concerning some parts of which so little accurate knowledge existed in common, as was in the possession of the parties at the time the treaty was negotiated, respecting the country through which the boundary is to run — It is to be hoped that the mutual desire known to exist on both sides that the business under consideration may be conducted to a prompt and satisfactory conclusion, and the fullness and accuracy of the directions in the Treaty itself, will in this instance prevent the occurrence of difficulty and delay from that and similar sources, and that at the same time, that the just claims and real interests of the respective countries will be understood and sustained by their agents, every pretension calculated to complicate and procrastinate the adjustment of the question will be carefully avoided. The President confidently relies upon your prudence and judgment for a proper advocacy of the rights and interests of your country, as secured by the Treaty.

He is obliged the more to confide in your discretion, vigilance and patriotic zeal from the impossibility of foreseeing whether any, and if any what questions may arise, and from the consequent necessity of leaving you in a great degree, to exercise your judgment in the discussion and solution of them. In all cases of serious difficulty you will immediately apply to this department, and will also report at the end of the years work.

Your Compensation is fixed by law at \$3000.00 per annum, and that of your clerk at \$1500. In former cases it has been usual when the service required the attendance of the Commissioners at Washington to complete their report, or for other purposes to allow their necessary travelling expenses, and the same allowance will accordingly be made to you. To meet their payment, and to provide for the contingent expenses of the Commission, provision has been made by Congress to the amount of \$15,000.00 and the duty of disbursing the money thus appropriated devolves on you. Your salaries will commence on the first of April next; at which time you will proceed to organizing the Commission and enter upon the service; and will terminate on its final adjournment or dissolution.

Under the head of contingent expenses of the Commission will be embraced your reasonable personal expenses and those of your clerk while in service, as well as those of the officers of the topographical engineers who may be detailed to assist you in the field, the pay and subsistence of assistant surveyors, chain bearers and labourers, and the incidental and necessary expenses of exploring parties, the purchase of stationery, of tents and camp equipage, and the purchase or hire of horses or waggons for the transportation of the same.

The proper mathematical and scientific instruments will be furnished to you — of all these expenses you will keep a regular account, which, together with the necessary vouchers, you will render and transmit quarterly to the fifth auditor of the Treasury for settlement, and to meet the same, as likewise the payment of the salaries you will from time to time, as occasion may arise draw upon this department, taking care not to exceed in the amount drawn at each time, the sum which shall be required to meet the actual expenses of the Commission.

So soon as the commission shall be organized you will transmit to this Department a list containing the names of the several persons composing it, the nature of the duties of each individual, and the compensation allowed to them respectively; and will also from

time to time acquaint the Secretary of State with any changes which you may, by circumstances, be induced to make in its organization.

As it is indispensable that each Government be furnished with a full and circumstantial record of the proceedings of the Commission the expediency will doubtless occur to the Joint Commissioners to order such records to be kept in duplicate.

This duty will naturally devolve upon the Clerks appointed on both sides, under the supervision of the respective Commissioners who will be responsible for the accuracy and for the safe delivery of such records, properly certified to their respective Governments, at the expiration of the commission.

You will with that view, provide the Clerk appointed on the part of the United States with suitable instructions respecting this and any other duty of a general or special nature which it shall be deemed proper to assign him.

As soon as the Boundary shall have been ascertained and marked, you will cause a true and accurate map to be made of the country through which it passes in its entire extent, and a duplicate copy of said map certified by the Commissioners surveyors and Clerks, on either side, to accompany the record of proceedings of the Commissioners and the joint report or declaration of the Commissioners required by the sixth article of the Treaty, to be filed with them in this department.

The President having authorized such an advance as the Secretary of State may deem reasonable and necessary to be made to you to meet the contingent expenses of the commission, you are hereby authorized to draw upon this Department from time to time as the service may necessarily require.

I am, Sir, respectfully, Your Obedient Servant

DAN^L WEBSTER

*Mr. Webster to Albert Smith.*¹

DEPARTMENT OF STATE, WASHINGTON, 22nd March, 1843.

SIR:—Major James D. Graham will be detailed by the Bureau of Topographical Engineers, as head of the Scientific Corps, on our side, to assist you in running, tracing and marking the line of boundary described in the first Article of the Treaty of Washington.

¹ From the draft, in the New Hampshire Historical Society.

He will meet with the Commission, the first of May at Bangor, and will aid you in concurrence with the British Commissioner and his associate to digest and arrange the plan of operations in the field (taking care to observe the terms of the Treaty) and to give the necessary directions to subordinates.

Lieutenant Lee and Lieutenant Thom will also be detailed, to be employed under your general direction and the Supervision of Major Graham, in carrying on actual operations in the field, with such additional surveyors, assistants, &c — as you may find necessary.

The heads of scientific corps on both sides (supposing the British Commissioner himself not to be one of them) having given all necessary and proper directions for the observations, surveys, measurements, &c., need not remain constantly in the field. It will be enough, if they meet the Commissioners at stated periods, to examine the progress of the work, and give new directions if necessity for such new directions should arise.

The number of parties which it may be useful to keep employed at the same time, on various parts of the line is a matter which the Commissioners of the two Governments, with the aid of the heads of the Scientific Corps, will decide. The necessary travelling and other personal expenses of Major Graham, Lieutenant Lee and Lieutenant Thom will be allowed, to be paid as intimated in my letter to you of the 17th instant out of the contingent fund of the Commission.

I am Sir — respectfully, Your obdt servt —

DANIEL WEBSTER

*Mr. Webster to Albert Smith.*¹

DEPARTMENT OF STATE, WASHINGTON, 30th March, 1843.

SIR; Since my letter to you of the 22nd instant was written, I have received from Mr Fox a copy of a despatch addressed to him by Lord Aberdeen, of the 24th ultimo, requesting him to enter into communication with this Government for the purpose both of imparting and obtaining information as to the proposed construction of the joint Commission under the sixth article of the Treaty of Washington, as well as on the general views which both governments entertain with regard to the most proper mode of proceeding to execute the objects of the treaty for which the Commission has been appointed.

¹ From the draft, in the New Hampshire Historical Society. Endorsed on the back, in Mr. Webster's handwriting, "Instructions to Honble A. Smith."

After a careful perusal of this despatch of which I now transmit you a copy, I have acquainted Mr. Fox that I cheerfully concur in the correctness of the views and the propriety of the suggestions of Lord Aberdeen, relative to the construction, and mode of operation, of the joint Commission, and that this Government will, so far as practicable on its part, heartily cooperate in carrying out his Lordship's wishes.

With this object, instead of three officers to be taken from the Corps of Topographical Engineers, as you were previously advised, five will be detailed to assist you under the supervision of Major Graham, as head of the Scientific Corps and principal astronomer, and a small number of soldiers at the military post of Houlton, will be held in readiness to act as sappers and miners, under the general direction of a proper officer, on your requisition should you at any time think their services necessary.

The President relies with confidence on your favorable dispositions in entering upon the task of tracing and marking the line of boundary, to meet any difficulties that may arise, between yourself and the British Commissioner, in its prosecution in a spirit of perfect fairness, conciliation and respect, and on your anxious efforts to promote by every proper means, a harmony, good understanding and cordiality between the officers of the Joint Commission, that will be alike honorable to them; and advantageous to the interests, and tend to bring the duties of the Commission to an early conclusion — a result much to be desired on many accounts.

I am, Sir, respectfully, Your Obedient Servant

DANL WEBSTER

Election Campaign Contributions

*Mr. Webster to Hon. Thomas Ewing, Secretary of the Treasury.*¹

DEPARTMENT OF STATE, March 20, 1841.

SIR: — The PRESIDENT is of opinion that it is a great abuse to bring the patronage of the General Government into conflict with the freedom of Elections; and that this abuse ought to be corrected wherever it may have been permitted to exist, and to be prevented for the future.

He therefore directs that information be given to all officers and agents in your Department of the public service that partisan in-

¹ National Intelligencer, March 21, 1841.

terference in popular elections, whether of State officers, or officers of this Government, and for whomsoever, or against whomsoever it may be exercised, or the payment of any contribution or assessment on salaries or official compensation for party or election purposes, will be regarded by him as cause of removal.

It is not intended that any officer shall be restrained in the free and proper expression and maintenance of his opinions respecting public men or public measures, or in the exercise, to the fullest degree, of the constitutional right of suffrage. But persons employed under the Government, and paid for their services out of the public Treasury, are not expected to take an active or officious part in attempts to influence the minds or votes of others; such conduct being deemed inconsistent with the spirit of the Constitution and the duties of public agents acting under it; and the President is resolved, so far as depends upon him, that while the exercise of the elective franchise by the People shall be free from undue influences of official station and authority, opinion shall also be free among the officers and agents of the Government.

The President wishes it further to be announced and distinctly understood, that from all collecting and disbursing officers promptitude in rendering accounts, and entire punctuality in paying balances, will be rigorously exacted. In his opinion it is time to return, in this respect, to the early practice of the Government, and to hold any degree of delinquency on the part of those entrusted with the public money just cause of immediate removal. He deems the severe observance of this rule to be essential to the public service, as every dollar lost to the Treasury by unfaithfulness in office creates a necessity for a new charge upon the People.

I have the honor to be, sir, your obedient servant,

DANIEL WEBSTER.

(Similar letters have been addressed to other heads of Departments.)

The Relief and Protection of American Seamen

*Mr. Webster to Millard Fillmore, Chairman Committee Ways and Means, House of Representatives.*¹

DEPARTMENT OF STATE, WASHINGTON, Jan. 29, 1842.

SIR: As several of the appropriations of the past year, subject to the direction of this Department, are exhausted, and others nearly so, I deem it proper to invite your attention to the fact, and to inform you, as I have the honor to do, that the Department is consequently without means to meet the public engagements.

This is particularly to be regretted in relation to the appropriation for the relief and protection of American seamen in foreign countries.

The consuls of the United States are, by law, (Laws U. S. vol. 3, page 527.) required to provide for the mariners and seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States. To do this, no advance of public money being made to them, they must apply their own funds, and, for their reimbursement, draw upon this Department. Drafts for this purpose are now lying unpaid, for want of an appropriation; and others may be expected every day. To suffer them to be protested and returned to the drawers will be productive of serious injury, not only to the agents of the United States, but to the character and credit of the Government, and may create a necessity of placing funds in advance in the hands of the consuls to meet the disbursements directed by law. This alternative, from the number of consulates, and the want of knowledge of the amount of relief that might be required at each, in any given period, would require an advance of funds to a greater amount than would probably be in all cases expended, and would, of course, call for a larger annual appropriation.

Under these circumstances, I have the honor to suggest to the committee the propriety and necessity of an immediate appropriation of fifteen thousand dollars for the relief and protection of American seamen in foreign countries, to enable this Department to pay the drafts already presented, and those which are expected

¹ Congressional Globe, February 12, 1842.

to appear, previous to the passage of the general appropriation bill.

I have the honor to be, sir, your obedient servant,

DANIEL WEBSTER.

The Acquisition of San Francisco

Mr. Webster to Waddy Thompson.¹

WASHINGTON, June 27, 1842.

DEAR SIR, — That part of your dispatch, N^o 1., which relates to California, & your private letter to the President of the 9th of May have been considered. There is no doubt that the acquisition of so good a port on the Pacific as S^t Francisco is a subject well deserving of consideration. It would be useful to the numerous Whaling Ships & trading vessels, of the United States, which navigate the Pacific, & along the Western Coast of America. It would in time probably become a place of considerable trade, having a good Country around it, but colonization & settlement could not be expected to advance, in that region, with the same spirit and celerity, as have been experienced on the Northern Atlantic Coast. In seeking acquisitions, to be governed as Territories, & lying at a great distance from the United States, we ought to be governed by much prudence & caution; & a still higher degree of these qualities should be exercised when large Territorial acquisitions are looked for, with a view of annexation. Nevertheless, the benefits of the possession of a good Harbour on the Pacific is so obvious, that to that extent, at least, the President strongly inclines to favor the idea of a treaty with Mexico. The claims of Citizens of the United States ag^t the Mexican Government are large. The amount of those already awarded, as you will see by another communication by this conveyance, is upwards of two millions of dollars; another large am^t failed of being awarded, as is supposed, only because the Umpire did not feel authorized to act upon them, after the expiration of the time limited for the duration of the Commission. There are still other classes of claims, of various descriptions, but amounting in the whole to a large aggregate. You are at liberty to sound the Mexican Gov^t upon the subject of a cession of Territory upon the Pacific, in satisfaction of these claims, or some of them. Although it is

¹ From the draft, in Mr. Webster's handwriting, New Hampshire Historical Society.

desirable that you should present the Port & Harbor of S^t Francisco as the prominent object to be obtained, yet, if a cession should be made, the Province would naturally accompany the Port. It may be useful, however for divers reasons, that the benefit & convenience of the Port itself should, at least for the present, be spoken of, as what is chiefly desired by the United States. I do not think that England has any present purpose of obtaining that important place, or would interpose any obstacles to the acquisition of it by the United States. What may be the wishes of France, in this respect I cannot say. You will please proceed in this matter very cautiously, & quite informally; seeking rather to lead the Mexican Secretary to talk on the subject, than to lead directly to it, yourself. You will be particularly careful not to suffer the Mexican Gov^t to suppose that it is an object upon which we have set our hearts, or for the sake of which we should be willing to make large remuneration. The cession must be spoken of, rather as a convenience to Mexico, as a mode of discharging her debts. By no means give countenance to any extravagant expectations. Avoid all premature commitments, content yourself with sounding the Government, endeavor to hear, more than you say, to learn more than you communicate; & apprise us promptly & regularly, of all that may occur on the subject.

Your project of visiting California this season can hardly be realized, as it is likely your presence will be required at your post.

I am, Dear Sir, with much true regard, Yrs.

The Northwestern Boundary

*Mr. Webster to James Ferguson, Wilmington, Delaware.*¹

DEPARTMENT OF STATE, WASHINGTON, July 25, 1842.

SIR: Having been astronomer and surveyor to the commissioners under the 7th article of the treaty of Ghent, and having, as I understand, explored the country personally and thoroughly, from Lake Superior to the Lake of the Woods, I will be obliged to you to give me information in respect to two or three subjects of inquiry.

In the first place, be kind enough to describe the Pigeon river, its estuary or bay at its mouth, its size, and the nature of its channel and current in the last five or ten miles of its course. Be

¹ Congressional Globe, Vol. xii. p. 22. See *ibid.* for Mr. Ferguson's reply.

pleased to say whether the estuary of this river, and its position and bearing in relation to Ile Royale, may naturally lead to the conclusion that it is the Long Lake spoken of in the treaty of 1783.

What is the general nature of the country between the mouth of Pigeon river and the Rainy Lake? Of what formation is it, and how is its surface; and will any considerable part of its area be fit for cultivation? Are its waters active and running streams, as in other parts of the United States? Or are they dead lakes, swamps, and morasses? If the latter be their general character, at what point, as you proceed westward, do the waters receive a more decided character as running streams?

There are said to be two lines of communication, each partly by water and partly by portages, from the neighborhood of Pigeon river to the Rainy Lake; one by way of Fowl Lakes, the Saganaga Lake, and the Cypress Lake; the other by way of Arrow river and lake; then by way of Saganaga Lake, and through the river Maligne, meeting the other route at Lake La Croix, and through the river Namekan in the Rainy Lake. Do you know any reason for attaching great preference to either of these two lines? Or do you consider it of no importance, in any point of view, which may be agreed to? Please be full and particular on these several points.

Yours, respectfully,

DANIEL WEBSTER.

The Right of Search

*Mr. Webster to the Speaker of the House of Representatives.*¹

February, 1843.

TO THE HON. THE SPEAKER, &c. &c., —

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 22d inst., requesting that the President of the United States be requested to communicate to that House, if not in his opinion improper, whatever correspondence or communication may have been received from the British Government respecting the President's construction of the late Treaty concluded at Washington, as it concerns an alleged right to *visit* American vessels, has the honor to inform the Presi-

¹ Boston Courier, March 3, 1843.

dent that Mr. Fox, H.B.M. Envoy Extraordinary and Minister Plenipotentiary, came to the Department of State on the 24th of Feb. inst., and informed the Secretary of State that he had received from Lord Aberdeen, H.M. Principal Secretary of State for Foreign Affairs, a despatch under date of the 18th of January, which he was directed to read to the Secretary of State of the United States. The substance of that despatch was, that there was a statement in a paragraph of the President's Message to Congress at the opening of the present session, of serious import, because, to persons unacquainted with the facts, it would tend to convey the supposition, not only that the question of right of search had been disavowed by the Plenipotentiary at Washington, but that Great Britain had made concessions on that point.

That the President knew that *the right of search never formed the subject of discussion during the late negotiation*, and that neither was any concession required by the United States Government nor made by Great Britain.

That the engagement entered into by the parties to the Treaty of Washington for suppressing the African slave trade, was unconditionally proposed and agreed to.

That the British Government saw in it an attempt on the part of the Government of the United States to give a practical effect to their repeated declarations against the trade, and recognized with satisfaction an advance towards the humane and enlightened policy of all Christian States from which they anticipated much good. That Great Britain would scrupulously fulfil the conditions of this engagement; and that from the principles which he has constantly asserted, and which are recorded in the correspondence between the ministers of the United States, in England, and himself, in 1841, England has not receded, and would not recede. That he had no intention to renew, at present, the discussion upon the subject. That his last note was yet unanswered. That the President might be assured that Great Britain would always respect the just claims of the United States. That Great Britain made no pretensions to interfere in any manner whatever, either by detention, visit, or search with vessels of the United States, *known or believed to be such!* But that it still maintained and would exercise when necessary, its own right to ascertain the genuineness of any flag which a suspected vessel might bear; that if in the exercise of this right, either from involuntary error, or in spite of every precaution, loss, or injury, should be sustained, a prompt reparation would be afforded. But that it should entertain

for a single instant the notion of abandoning the right itself, would be quite impossible!

That these observations had been rendered necessary by the message to Congress. That the President is undoubtedly at liberty to address that assembly in any terms which he may think proper; but if the Queen's servants should not deem it expedient to advise Her Majesty also to advert to these topics in her speech from the throne, they desired nevertheless to hold themselves perfectly free when questioned in Parliament, to give all such explanations as they might feel to be consistent with their duty, and necessary for the elucidation of the truth.

The paper having been read and its contents understood, Mr. Fox was told in reply that the subject would be taken into consideration, and that a despatch relative to it would be sent, at an early day, to the American Minister in London, who would have instructions to read it to Her Majesty's Principal Secretary of State for Foreign Affairs.¹

DANIEL WEBSTER

¹ The following paper on the same question is printed from a manuscript, in Mr. Webster's handwriting, in the New Hampshire Historical Society. The date, 1846, has been endorsed by another hand.

"He said that he had been surprised by what Sir Robert Peel had said, in the H. of C. in the Debate on the Address; that he thought the purport & object of the paragraph complained of in the President's Message had been quite misapprehended. — That every one knew that there had been no discussion between Lord Ashburton & himself, on the r'ght of Search, as it is called; & that the articles in the Treaty, providing for the cruising squadrons, were adopted with the hope of rendering all further discussion of the subject unnecessary. That it was the practical evils, which experience had shown as likely to result, constantly, from interferences by armed cruisers with Merchant Vessels, that had led the United States to decide to supersede all necessity for such interference, for the future — and he thought Lord Aberdeen would find on a more careful perusal of the President's Message, that he had given no countenance to the idea that the American flag would protect anything but American Vessels.

"In short, he said, that seeing the controversies which had sprung up between European States, on this question of the r'ght of visit, or search, & that the whole matter had arisen out of efforts to suppress the African Slave trade, the American Govt had proposed a policy of its own, for itself, which it was hoped would keep it clear of those controversies. And that the Govt of the U. S. was the more inclined to do this, from the consideration, that the practice of visit'g & detain'g Vessels, lead'g as he had already said to constant abuses, or evil consequences, in particular cases, tended also, or might tend, to draw after it a more general result; that is to say, that the whole police of the sea, so to speak, would naturally fall into the hands of one leading Maritime State; a result, which might cause prejudices, if it did not threaten dangers."

The Brazilian Chargé d'Affaires

*Mr. Webster to R. C. Schenck.*¹

WASHINGTON, DEPARTMENT OF STATE, Jan. 19. 1852.

MR. DE SODRE has been here some months, as Chargé d'Affaires of His Brazilian Majesty. I have understood that when he first arrived in the country, it was not his wish long to fill the post which he occupies near this Government, but have now reason to believe that if it be the pleasure of his Government he would now be content to prolong his stay here in the discharge of his official duties.

Mr. de Sodre's conduct and bearing toward this Govt. have been in the highest degree satisfactory & both he & his amiable Family have won much esteem, both in the political and social circles with which they have mixed. We should be gratified by his continuance, if such should be the Emperor's pleasure, as I believe the mission and residence here of no other Gentleman could be more likely to continue and confirm amicable relations now subsisting between the two countries. You may cause the contents of this communication to be made known to the Emperor and his Government in such delicate and proper manner as may be most respectful. I am, with true regard, Yrs DANL WEBSTER.

Argentine Affairs

*Mr. Webster to J. S. Pendleton.*²

DEPARTMENT OF STATE, WASHINGTON, 9th April, 1852.

SIR:—Your despatches, to No. 6, inclusive, have been received.

It is to be hoped that the overthrow of Governor Rosas will not prevent the punctual payment of the instalments of Mr. Halsey's claim as they shall fall due, pursuant to the arrangement upon the subject. If, however, this just expectation should be disappointed, you will inform the Buenos Ayrean government that

¹ From a manuscript, in Mr. Webster's handwriting, in the Collection of Hon. George F. Hoar.

² This and the following letter are printed from manuscripts, not in Mr. Webster's handwriting, but signed by him, and owned by Hon. George F. Hoar.

it will be expected to allow interest upon any payment which may be delayed.

This expectation is more reasonable from the fact that the instalments themselves do not draw interest from the date of the adjustment.

I am, Sir, very respectfully,

Your obedient servant,

DANL WEBSTER.

Mr. Webster to R. C. Schenck.

DEPARTMENT OF STATE, WASHINGTON, 28 April, 1852.

SIR:— Since the fall of Rosas, it seems to have occurred to the principal commercial States, that an opportunity would be afforded to obtain an important vent for their productions by means of the mighty rivers which flow through or bound the territories of the Argentine Confederation.

The subject has attracted the attention of the British Parliament, and it is understood that the government of Great Britain is about to despatch a special Minister to Buenos Ayres for the purpose of proposing arrangements with a view to secure the object referred to.

From conversations, also, which have been had with Mr. Cramp-ton, Her Britannic Majesty's Minister here, it seems, that the matter has been officially brought to the notice of the French government by that of Great Britain, and the co-operation of this government has likewise been invited.

The President, in view of the well known and uniform policy of the United States, is consequently disposed to co-operate with other powers in extending the benefits of commercial intercourse to those remote regions.

In adopting this course, he is not actuated by any desire to seek peculiar advantages for the United States, nor would he consent that other governments should obtain monopolies or exclusive privileges.

We are not well advised of the actual state of political affairs in that quarter. The general impression, however, is that as the restrictive policy of Rosas had more or less influence in inciting and directing that hostile opposition to his rule, which has resulted in his overthrow, his successor will reverse that policy.

How far this impression may prove to be well founded, it would

be unsafe to predict, when the prejudices of Statesmen of the Castilian race, and other circumstances shall be taken into due consideration. Even if General Urquiza, or whoever may be charged with the foreign relations of the States composing the Argentine Confederation, jointly or severally, should be disposed to allow a more free admission of foreign products into the Argentine Confederation, he may not be willing to permit them to be conveyed on more, or even on equally favorable terms along the Argentine rivers, when destined to other countries, in which those rivers take their rise, or through which they flow in part. Still less could he be expected to permit those rivers to be navigated by foreign vessels, whether propelled by steam or by sails, or whether their voyages along the rivers should be limited to points within his own country or extended to the territories of the Uruguay, of Brazil, of Bolivia, or of Paraguay. It is well known that Rosas resolutely refused to acknowledge the independence of the latter State, and when he supposed that it was the intention of the administration of President Polk to acknowledge it, officially protested against it, in advance, through the Minister of the Argentine Confederation accredited to this government.

And even if Urquiza should acknowledge that independence, the act would be of no advantage either to foreign powers, or to Paraguay herself, if he should refuse free access to and from that country by the rivers which empty into the La Plata. As his own territories occupy both banks of some of those rivers, he would have at least a show of right for this refusal, as much, indeed, as Great Britain has for withholding from the United States the free navigation of the St. Lawrence.

In the judgment of the President, however, the probabilities of the adoption of a liberal policy by Urquiza are sufficiently strong, and its importance to the interests of the United States is great enough, to warrant and require vigilance and activity on our part towards securing any advantages which may be derived therefrom.

This is the more necessary for us in contradistinction to Great Britain, as we have never had any treaty with the Argentine Confederation, whereas Great Britain has long had one with that State, from which her navigation and commerce have enjoyed more or less advantages over those of the United States.

You will consequently repair to Buenos Ayres, and in concert with Mr. Pendleton, the Chargé d'Affaires of the United States at that place, you will propose to the Buenos Ayrean government,

a treaty of commerce with the United States. Such a treaty, if concluded upon a broad basis, such as that of the treaty between the United States and the Republic of Costa Rica, of which copies are herewith enclosed, would be sufficient for the purpose. A treaty upon any other basis, however, not inferior to that which Great Britain or other powers may have or may conclude with that government, would be acceptable.

A full power, authorizing you to act jointly with, or in case of accident, separately from Mr. Pendleton, is herewith transmitted.

It is presumed your absence from Rio Janeiro need not be prolonged beyond ¹ months.

You will present Mr. Cox as Chargé d'Affaires ad interim during that time.

You will of course be allowed your travelling expenses to and from Buenos Ayres, of which you will keep a separate account, to be supported by vouchers when they can be obtained. For those expenses actually incurred, you will draw on this Department, specifying the object on the face of your drafts.

A letter from the President of the United States, introducing you to the President of the Argentine Confederation, one from myself to the Minister for Foreign Affairs of that Confederation, and a special passport which you will no doubt find useful, are also herewith transmitted.

I am, Sir, very respectfully

Your obedient Servant,

DANIEL WEBSTER.

Diplomatic Salaries

*Mr. Webster to John S. Pendleton.*²

DEPARTMENT OF STATE, WASHINGTON, 4 NOV. 1851.

SIR, — I have the honor to inform you that, on the 31st of January last, the Senate of the United States adopted a resolution in the following words: —

“Resolved: — That the Secretary of State be requested to communicate to the Senate any information which he may possess

¹ There is a blank space in the manuscript.

² From the original, not in Mr. Webster's handwriting, but signed by him. Owned by Hon. George F. Hoar.

touching the expediency of adopting a graduated scale of diplomatic salaries based upon the combined considerations of the importance of the Mission and the expense of residence."

I have accordingly to request that you will, at your earliest convenience, transmit to this Department a statement of the expenses incident to your residence in your official character at Buenos Ayres. It is desirable that the information should be specific and accurate, in order that the Department may form a correct opinion on the subject.

I am, Sir, respectfully, Your obed. servant.

DANL WEBSTER.

The Coup d'État

Mr. Webster to William C. Rives.¹

YOUR despatches have been regularly received, up to the 18th of this month.

The movement made by the President of the Republic of France, on the second instant, created surprise here, as well as with you, not only by the boldness & extent of its purpose, but also by the secrecy with which preparation for it had been made, the suddenness of its Execution, & the success which appeared to have attended it. Events however had already arisen, sufficient to satisfy sagacious observers, that the Government of France had arrived at the brink of a momentous crisis. No one could well doubt this, after the Debate in the Assembly on the Bill for enforcing the responsibility of the President & his Ministers, after the appearance of the Articles in the *Constitutionnel* & *Moniteur*, & after the President's Discourse, on the twenty fifth of Nov^r, on the occasion of delivering the medals to the artists who had taken part in the Exhibition in London.

Unfortunately, the whole political Government of France, by the late Constitution, was vested in one numerous Assembly, & in the President. There was no third power, no check, no mediator

¹ From the original draft, mainly in Mr. Webster's handwriting, New Hampshire Historical Society. The date, Dec. 31, 1851, and a memorandum, "very interesting, in Mr. Webster's hand," have been endorsed on the paper. The official letter sent to Mr. Rives was dated January 12, 1852. It is printed in *Diplomatic Papers Hitherto Uncollected*, from a copy furnished by the Department of State. Several passages in the manuscript at the New Hampshire Historical Society are not in the official letter.

or moderator, between these, if disagreement should arise, & actual conflict be threatened.

The Assembly & the President were distinct & separate forces, both essentially uncontrolled, & if they should come to be opposing forces, & should rush into collision, it was obvious enough that the destruction of one or the other must be the consequence.

This form of constructing a Constitutional Government was a fatal error; & it is strange that the French People, with their own history before their eyes, did not perceive that, which, from the first, was sufficiently visible to discerning & reflecting minds. It is impossible to unite public Liberty with the safety of society, & the security of persons & property, without guards, & balances, & strong barriers, not only against the illegal exercise of the Executive power, but also against the irregular, sudden & impetuous action of popular bodies.

Despotism may be, & usually is, quite simple in its form of national rule. Where all are subject to the will of one, it is sufficient that the will of that one be expressed; & this, of course, is a short process. But true Republican Liberty cannot subsist, without a system of efficient restraints, imposed upon all who exercise political power. Hence the proposition, apparently paradoxical, is strictly true, that Liberty consists in restraints; that is to say, the Liberty of each individual is in proportion to the restraints imposed on other individuals, & public bodies, who might otherwise have the power, as well as the disposition, to do him wrong. Republican Governments, in their fundamental Constitutions, in their legislation, & in their judicial administration, must necessarily have something of complexity; and altho' such Governments may sometimes find themselves embarrassed by too much regulation, it is a great mistake to imagine, that simplification is a process by which Public Liberty is either secured, or improved. Simplification belongs to Despotisms; regulation belongs to Republics.

It was quite natural that you should be in no haste to appear at the Public receptions of the President, after the overthrow of the written Republican Constitution of France. You sympathise, in this respect, with the great body of your Countrymen. If that overthrow had become necessary, its necessity is deeply to be deplored; because however imperfect its structure, it was the only great Republican Government existing in Europe, & all Americans wished it success. We feel as if the catastrophe which has befallen it may weaken the faith of mankind in the permanency &

solidity of Republican Institutions. Nevertheless, & although our own Government (is) now (the only great) Republic on earth, we cling to its principles with increased affection. Long experience has convinced us of its practicability to do good, & its power to maintain Liberty & order. We know that it has conferred the greatest blessings on the Country, & raised her to eminence & distinction among the nations ; & if we are destined to stand, the only great Republican Nation, so we shall still stand.

Before this reaches you, the election in France will be over, & if, as is probable, a decided majority of the People should be found to support the President, the course of duty for you will become plain.

From President Washington's time down to the present day, it has been a principle, always acknowledged by the United States, that every nation possesses a right to Govern itself according to its own will, to change its institutions at discretion, & to transact its business thro' whatsoever agents it may think proper to employ. Whatever form of Government may exist in a country, if it be founded on the assent of the People, and appears to be settled & permanent the U. S. consider it as lawfully established. This cardinal point in our policy has been strongly illustrated by recognizing the many forms of political power which have been successively adopted in France in the series of Revolutions with which that Country has been visited. Our first Diplomatic relations with her commenced in the reign of Louis the 16th. After the dethronement & death of that Monarch, in 1793, the political authority of France was vested in a Convention, then in the Council of Ancients, & the Council of Five Hundred with an Executive composed of a Directory: next came the Consulate, & next the Empire, & then the Restoration of the Bourbons; then the Revolution of 1831, & the elevation of Louis Phillippe, of Orleans upon the throne; then the Revolution which overthrew the power of Louis Phillippe, & expelled him from the Country; then came the Dictatorship of Gen. Cavenac, & then his Presidency of the Council, with supreme Executive Power; & then the Provisional Government; which in its turn was succeeded by the Late Republic; & the Election of Louis Napoleon Bonaparte as President. Throughout the whole of this series of changes the Government of the United States has conducted itself in strict conformity to the original principles, adopted by Washington, & made known to our Diplomatic agents abroad, & to the Nations of the world, by Mr. Jefferson's letter to Mr. Gouverneur Morris of the [12] of

[March] 1793. If it has been found somewhat difficult to keep up with these changes, the Government of the United States, nevertheless, have kept up with them; & if the French People have now substantially made another, we have no choice but to acknowledge that also: and as the Diplomatic Representative of your Country in France, you will act as your predecessors have acted, & conform to what appears to be settled National Authority.¹ And while we shall most deeply regret, if after so many years of struggle, for liberty and popular institutions, after so many years of war & so much shedding of blood, for the cause, or in the name of civil liberty it shall be found that France has failed to obtain that great object, & to secure its durability, our ancient ally, has still our good wishes, for her prosperity & happiness & we are bound to leave to her, the choice of means for the promotion of those ends.

The Rescue of Shadrach

*Mr. Webster to Hon. John P. Bigelow, Mayor of Boston.*²

WASHINGTON, March 10th, 1851.

SIR,—The President has had the pleasure to receive your letter of the 15th February, enclosing official copies of the order and resolves lately adopted by the two branches of the Government of the City of Boston.

It affords him great satisfaction to perceive, that such measures have been taken by the authorities of Boston, as give assurance that no other outrage, similar to that which was, he presumes, the immediate cause of their adoption, will be permitted to take place in your city.

From his earliest youth he has been accustomed to regard with the greatest respect and veneration the City of Boston, and the Commonwealth of Massachusetts.

He has been taught to believe, that their inhabitants were, almost above all others, the friends of order and good government; intelligent enough to appreciate the advantages of free institutions of their own choice, and capable of understanding and resolving that great political problem, of the compatibility of freedom with order, of liberty distinguished from licentiousness, and of self-government the farthest removed from the dangers of anarchy;

¹ What follows is in another hand.

² Boston Courier, March 21, 1851.

that they were especially devoted to the union of the states, and to the Constitution which established, and still maintains that Union; and that their patriotism would never fail to counsel them to fulfil all their obligations under the Constitution, justly and fully, and in the very spirit in which such obligations were entered into by their renowned ancestors.

Entertaining these sentiments, it was difficult for the President to credit the accounts which were received, of the outrage on all law, perpetrated in Boston, on the 15th of February last.

That a prisoner, in lawful custody, within the walls of the Court House, in the centre of the city, and in the full sight of the offices of the municipal authorities, had been, at noonday, forcibly rescued, by a mob of one or two hundred persons, from the officers of the law, carried out of the building, and through the public streets, in a sort of triumph, and enabled to escape altogether, without an attempt on the part of any of the authorities, or any of the citizens, to preserve order and maintain the law, or to pursue and retake the fugitive, was a statement that seemed to him too improbable to be true.

It was with a feeling of great relief that he received such explanations of this strange occurrence, as showed it to have been an entire surprise upon the citizens, and upon the authorities; an act of successful temerity, on the part of a very inconsiderable number of persons, which only needed to have been apprehended the shortest time beforehand to have been prevented.

The President is confident that the great majority of the citizens of Boston are entirely loyal to the Constitution; that they view with just indignation all such outrages, and all attempts, whether by writing or speaking, to incite the ignorant and unthinking to such acts of violence; and that they are ready to discharge the duties incumbent on them, by the Constitution and laws of the United States, faithfully and fearlessly, under all circumstances, whenever called upon by the proper authorities.

The occurrence of the 15th February is certainly greatly to be regretted, as it gives occasion to those not unwilling to seize upon it, to question the disposition of your fellow-citizens to comply with their constitutional obligations in good faith; and the history of such an outrage is spread far and wide, reaches where an explanation of it may never follow, and creates ill feelings towards those whose only connection with it is that they were residents of the place in which it was perpetrated. But if, as the President doubts not it will, this event shall arouse the attention of all good

citizens to a sense of the dangers to be apprehended from the inculcations of such doctrines as have been spread abroad in the country, tending to shake the authority of all law, to unsettle society, and to absolve men from all civil and moral obligations; and shall put them on their guard against the further diffusion of such pernicious sentiments, it may in the end, be productive of happy results; and, certainly, the almost unanimous expression of indignation which it called forth among your citizens, balances, to some extent, the ill effect flowing from it.

The President does not doubt that the people of Massachusetts perfectly well understand the difference between the freest discussion of political measures, and opposition to legal enactments already made, and established. He is quite sure that they regard the law of the land not as a sentiment, or an opinion; but as a rule of conduct prescribed by the general authority, and which all are bound to obey, at the risk of the penalties attached to its violation.

The President directs me to tender you his thanks for the transmission of the resolutions.

I remain, Mr. Mayor, with great respect, Your obedient servant,

DANIEL WEBSTER.

The Fisheries, July, 1852.¹

It was Mr. Webster's purpose in concluding this paper to discuss the nature and character of those international relations which are not abrogated by war.

In the last clause of his paper it will be seen that he admits that the liberty to cure & dry fish on the shores of the British Provinces was a concession, not exempted from abrogation, by a subsequent war. He was then about to treat of the other branch of the subject & to show that the right to take fish according to previous usage, along the shores & in the waters of the British

¹ From a manuscript in the New Hampshire Historical Society. It is endorsed: "Mr. Webster's last official letter, written in July, 1852. Unfinished." The Introduction is in Fletcher Webster's handwriting, and the paper itself is in the handwriting of G. J. Abbot, Mr. Webster's private secretary, and in that of others.

Provinces was one of those rights not abrogated by a subsequent war. On this point he one day told the Editor he was quite prepared, and he was indeed anxious to state his views in full in an official communication.

Other engagements, various interruptions, &, at last, his illness, prevented his treating of this latter and more important topic

Ed. FLETCHER WEBSTER.

It is quite evident that from the very commencement of Negotiations for a Treaty of Peace in 1782, the United States always insisted upon a participation in the Eastern fisheries, not as a concession, or as a matter of liberty ; but as a matter of right. This was most distinctly stated by the American Commissioners to those of England, at Paris on the 29th of November, 1782. Mr. John Adams, one of those Commissioners, declared that Mr. Strachey and Mr. Fitzherbert on the part of England, urged the American Commissioners to leave out the word *right* and substitute the word *liberty*, saying that the former was an obnoxious expression. Thereupon Mr. Adams, rising up, said, that though they were to agree to all the other Articles, and left that of the Fisheries to be adjusted at the Definitive Treaty, he would never put his hand to any Article without satisfaction about the Fisheries ; 'that he had been honored three or four years before by Congress with a Commission to make a Treaty of Commerce with Great Britain, and it had given positive instruction not to make any such Treaty without an Article acknowledging our right to the Fisheries ; and he added that there neither was, nor could be a clearer right ; that in former Treaties, as for instance those of Utrecht and Paris, England and France had claimed the right and used the word.

“When God Almighty made the Banks of Newfoundland at three hundred leagues distant from the People of America, and six hundred leagues from those of England and France, did he not give as good a right to the former as to the latter ?

“If Heaven in the Creation gave a right, it belongs to America as much as to England. If occupation, use and possession give a right, America is as much entitled to it as England. If war and blood and treasure give a right, the claim of those who have been English Colonies is as clear as that of Great Britain. For America has been constantly fighting in Canada, Cape Breton and Nova Scotia for the defense of these fisheries, and has expended beyond all proportion more than England herself.

"If then the right cannot be denied, why should it not be acknowledged and put out of dispute?"

Mr. Laurens said, at the same time, with great firmness, that he agreed with Mr. Adams and could never give his voice for any Articles without an acknowledgment of the American right to the Fisheries; and Mr. Jay added that it could not be a peace, it would only be an insidious truce without it. To all this, Mr. Fitzherbert, one of the English Commissioners, replied, that the reasons appeared to be good, and the argument was in their favor.

The instructions to which Mr. Adams referred are the following:

"I. That the common right of fishing shall in no case be given up. II. That it is essential to the welfare of these United States that the inhabitants thereof at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the Treaties between France and the said states; III. That application shall be made to His Most Christian Majesty to agree to some article or articles for the better securing to these states a share in the said fisheries; IV. That if, after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States, in taking fish on the banks and places hereinafter described, such molestation, being in our opinion a direct violation and breach of the peace, shall be a common cause of the said States, and the force of the Union be exerted to obtain redress for the parties injured; V. That our faith be pledged to the several states, that, without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are therefore not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part, not to molest or disturb the inhabitants of the United States of America in taking fish on the Banks of Newfoundland and other fisheries in the American Seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war; if a nearer distance cannot be obtained by negotiation. And in the negotiation you are to exert your most strenuous endeavors to obtain a nearer distance to the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia; as to which latter we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries by the inhabitants of these states."

Upon this assertion of right on our side and its admission on the other, the Treaty of Peace of Nov. 30th 1782, was negotiated and signed. The words of that Treaty respecting the Fisheries are as follows:—

“It is agreed that the people of the United States shall continue to enjoy unmolested, the right to take fish of every kind on the Grand Bank and on all the other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both Countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island); and also on the coasts, bays, and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose, with the inhabitants, proprietors or possessors of the ground.”

Nothing can be more clear or definite than this Article. It admits a common right on the part of the Citizens of the United States with the subjects of Great Britain.

What those Citizens and subjects had been accustomed to do, they are to have a right to do thereafter. It is not a right granted, but a right acknowledged and continued.

It is undeniable that under this provision of the Treaty of Peace of 1783 & the preliminary Treaty of 1782 the citizens of the United States continued to carry on the Fisheries in all the Eastern waters, with the exception of approaching to and using the shores in certain localities.

It is admitted that by these treaties, the right of approaching immediately to, and using the shore for drying fish, is called a *liberty*, & throughout this discussion it is important to keep up constantly the plain distinction between an acknowledged right, and a conceded *liberty*. When the United States became an independent nation, the territorial limits of England, & her colonies became interdicted to them, as to other foreign States. And the rule of the public law which gives the right of jurisdiction to the owner of the land, over the adjacent sea, to the extent of three marine miles, (not leagues*), no doubt attached to all the colonies and provinces of England, as well against citizens of the United States, as the subjects of other nations. From the conclusion of the peace, to the breaking out of the war of 1812, the citizens of

* One of the commissioners had used the word *leagues* instead of *miles*, in the course of the discussion.

the United States enjoyed fully and freely all the rights acknowledged, and all the liberties granted by that Treaty.

Afterwards in the year 1815 a very able correspondence took place between Lord Bathurst, His Majesty's principal Secretary of State, & the Colonies, and Mr. John Quincy Adams, the minister of the United States in London. In this correspondence the grounds assumed and attempted to be maintained by the British ministry are, — That the right of the United States to the Eastern fisheries was derived from the third article of the Treaty of 1783, and from that alone; and that the claim of an independent state to occupy and use at its discretion, any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation; that the stipulations of the Treaty were founded on reciprocal advantage & mutual convenience; that the duration of the privileges contained in the Treaty, depended on the duration of the instrument; that Great Britain knew of no exception to the rule, that all treaties are put an end to by a subsequent war between the same parties; that in the Treaty of Ghent there was no reference express or implied to the Treaty of 1783, as still in force; that it is not unusual for treaties containing recognitions and acknowledgments of titles in the nature of perpetual obligations, to contain, likewise, grants of privileges liable to revocation, and such was the character of the Treaty of 1783; the acknowledgment of the independence of the United States was of the former character & the right to fish within British limits, and to use British Territory was of the latter; that The language of the Treaty itself shows this distinction; for Great Britain acknowledged the right of the United States to take fish on the Banks of Newfoundland, & other places from which Great Britain had no *right* to exclude an independent nation. But they were to have liberty to cure and dry that fish in certain unsettled places within His Majesty's dominions. As to the origin of the fishery privileges, so long as the United States constituted a part of the British dominions, the inhabitants had the enjoyment of them, as they had of political and commercial advantages; but they had, at the same time, duties to perform as British subjects; but when they became an independent nation, as they were released from the duties, so they became excluded also from the advantages of British subjects.

To all this Mr. John Quincy Adams replied that the Treaty of 1783, was from its subject matter as well as from the relations previously existing between the parties to it, peculiar; that it was

intended to constitute a new and permanent state of diplomatic relations between the two Countries which would not and could not be annulled by the mere fact of a subsequent war between them. This was stated with confidence because Lord Bathurst himself admitted, that the whole of the Treaty of 1783 is of this character with the exception of the article concerning the navigation of the Mississippi, and a small part of the article concerning the fisheries. To the statement that Great Britain knew of no exception to the rule that all treaties are determined¹ by a subsequent war between the parties, it was answered that it was not only novel, but unwarranted by any of the received authorities upon the law of nations, unsanctioned by the practice and usages of sovereign states, and tended to multiply the incitements to war, and could not be reconciled with the admission that, Treaties usually contain, together with the articles of a temporary character, liable to revocation, recognitions and acknowledgments *in the nature of perpetual obligations* ; That if war puts an end to all treaties, what could be the meaning of those articles which in almost all treaties of commerce are provided especially for the contingency of war & which during the peace are without operation ? As for instance, the 10th Article of the Treaty of 1794 between the U. S. & Great Britain ; That there are many exceptions to the rules laid down by Lord Bathurst, such as those relating to all engagements contracted with the understanding that they are to operate equally in war and peace, or exclusively during war, to all engagements by which the parties superadd the sanction of a formal compact to principles dictated by the eternal laws of morality & humanity ; and finally to all engagements, which are in the *nature of perpetual obligations* — to which latter class belongs the Treaty of Peace of 1783 ; That Lord Bathurst was mistaken in supposing that there was no reference in the Treaty of Ghent, to the Treaty of 1783, whereas in four of the Articles of the Treaty of Ghent, the Treaty of 1783 is not only named, but its stipulations form the basis of new engagements between the parties.

Mr. Adams contended that the United States had peculiar and original rights to the Fisheries, having made their discovery & improved them, and from their proximity to the Fishing Banks, had prosecuted them to greater advantage than they ever had been by the remoter parts of the Empire, and finally because they had contributed their full share, and more than their share, in securing the conquest from France of the provinces on the coast, on which these fisheries are situated.

¹ There is an interrogation point over "determined" in the manuscript.

And it was from these considerations that, in the Treaty of Peace of 1783, an express stipulation was inserted, recognizing the rights and liberties which had always been enjoyed by the people of the United States in these fisheries, and declaring that they should continue to enjoy the right of fishing on the Grand Bank, and other places of common jurisdiction on the North American coasts, to which they had been accustomed while they themselves formed a part of the British nation. It was a stipulation contained in a Treaty by which the king of Great Britain acknowledged the United States as free, sovereign and independent states; a treaty which, by the common understanding & usage of civilized nations could not be annulled by a subsequent war between the same parties. The rights and liberties in the fisheries were, in no respect granted by Great Britain to the United States, but they were acknowledged as rights and liberties enjoyed before the separation of the two countries, and which it was agreed should continue to be enjoyed under the new relations, which were to subsist between them. They could not be cancelled by any declaration on the part of Great Britain; they could only be abrogated by the renunciation of them by the United States themselves. In respect to the use of the words *liberty* and *right*, it was contended that the term *liberty*, far from including in itself, either limitation of time, or precariousness of tenure, is essentially as permanent as that of *right*, and can with justice be understood only as a modification of the same thing; and as no limitation of time is implied in the term itself, so there is none expressed in any part of the article to which it belongs. The restriction at the close of the article is itself a confirmation of the permanency belonging to every part of the article, to which it belongs.

A correspondence on the subject took place in Washington in 1816 between the Secretary of State of the United States, Mr. Monroe and Sir Charles Bagot, then here, but which came to no practical result.

In 1818 the subject was resumed in London, by Messrs. Gallatin & Rush, on the part of the United States, and Mr. Robinson and Mr. Gouldbourn, on the part of England; the plenipotentiaries of the United States, acting under instructions from the Department of State to the following effect, to wit, — “were authorized to agree to an article whereby the United States will desist from the liberty of fishing, & curing & drying fish, within the British jurisdiction *generally*, upon consideration that it shall be secured as a permanent right, not liable to be impaired by any future war, from Cape Ray to the Ramea Islands, & from Mount Joli, on the

Labrador coast, through the Strait of Belleisle, indefinitely north along the coast; the right to extend as well to curing & drying the fish as to fishing."

Now it is to be observed that this instruction respects only the use of the shores, and the fishing, within three miles thereof. No instruction, authority, or permission, is given to Messrs. Gallatin & Rush to surrender, or qualify, in any manner whatever, the original right of fishing in the seas, and Great Bays, & Gulfs, as the same had already been maintained, insisted on, and acceded to, at the Treaty of 1783. Nor does their correspondence show that any such surrender had been made or contemplated by them, or was claimed or insisted on, although it was intimated that the British Plenipotentiaries, according to the idea previously expressed in Lord Bathurst's note, were inclined to maintain that all the provisions of the Treaty of 1783, were abrogated by the war of 1812.

This point will be considered, hereafter in this paper. At present the undersigned, is speaking of the Convention of 1818, and he has to remark — *

It must be taken for granted, therefore, that in all which respects this part of the case, the American Commissioners meant to stand, and supposed they were standing, on the original American grounds. Nor is it discoverable that the British Plenipotentiaries thought otherwise, for in none of the Protocols of conference, in no memorandum, nor in any communication of any other kind, do they intimate any purpose of excluding the American Fishermen from the Bay of Fundy, the Gulf of St. Lawrence, or any other Bays, basins or expanses of water to which American fishermen had been in the habit of resorting. On the contrary, it will be found that all their conferences, all their conversations, and all memoranda upon the subject, are confined to the fishing within the three miles from the shore, and the curing & drying fish on the shore. It is clear therefore, that the words of the Treaty are to be explained by reference to this plain and indubitable understanding of the parties. The important words of this Article are these; "It is agreed between the high contracting parties that the inhabitants of the said United States shall continue to enjoy unmolested, forever, the liberty to take fish, of every kind, on that part of the southern coast of Newfoundland, from the said

* "Here Mr. Webster was interrupted by the entrance of a visitor, which prevented any farther dictation during the day. On the following day the subject was resumed, but not with the remark which Mr. Webster had intended to make.

G. J. A. *Amanuensis*."

Cape Ray to Coffin Island, on the Magdalen Islands, and also on the coasts, bays and harbors and creeks from Mount Joli on the northern coast of Labrador, to and through the straits of Belleisle, and thence northwardly indefinitely along the coast; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland above described, of the Magdalen Islands, and of Labrador as here above described; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground; and the United States hereby renounce any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks and harbors of his Britannic Majesty's dominions in America, not included within the above mentioned limits."

It seems to the undersigned that these words according to their natural import, and without any aid to their construction by the Proviso which follows, are confined to fishing within the three miles, and to drying fish on the land. The term "*taking fish*" certainly does occur in the clause; but is immediately limited by reference to the three miles, and to the process of curing & drying on the land. And the word "bay" in the clause quoted also occurs, but it occurs likewise in the proviso, and we may look to the sense which it bears in the proviso, as explanatory of its meaning in the Article.

In the Proviso the word occurs in this connection, to wit—

"That the American Fishermen shall be admitted to enter such bays and harbors for the purpose of shelter & of repairing damage therein, of purchasing wood, & of obtaining water, and for no other purpose whatever."

The signification of the word *bay* therefore, is known by its concomitants. It is a bay where shelter is to be had, where damages may be repaired, & where wood and water may be obtained.

It is a bay used synonymously with a harbor, which may be resorted to for the same purposes. It is hardly less than absurd to say, as it appears to the undersigned, that the meaning was that a United States fishing vessel might put into the Bay of Fundy

for shelter, or the Gulf of St. Lawrence for repairs, or the Bay of Chaleurs for wood and water.

Most clear is it, then, that the term *bay*, used in the proviso, means landlocked recesses, places inaccessible to winds, in short natural harbors.

What ground is there for giving to the term *bay*, in the principal clause, any broader extent, especially as giving it that broader extent, and understanding it in the sense in which the provincial authorities appear to understand it, would be to suppose that the American Commissioners had given up all the old ground upon which the United States had stood, and which they had maintained from the first, and to violate their own instructions, purposes which there is no proof of whatever kind, that they even contemplated? But there is another consideration still more stringent in the construction of this word *bay*, for the proviso says, that American fishermen may enter into "such bays and harbors for the purpose of shelter and of repairing damage therein, of purchasing wood and obtaining water," — thus making the term *bay* in the proviso synonymous with the principal article of renunciation, and this shows conclusively that the bay in which American vessels might find shelter, repair damages, and obtain wood and water, was the very bay, and none other, than such as they were excluded from.

And the undersigned takes the liberty of quoting a passage from a letter of Mr. Everett, Minister Plenipotentiary of the United States, to Lord Aberdeen, as follows,

"The construction set up by her Majesty's colonial authorities, would altogether nullify another, and that a most important stipulation of the treaty, about which there is no controversy, viz. the privilege reserved to American fishing vessels of taking shelter and repairing damages in the bays within which they are forbidden to fish. There is, of course, no shelter nor means of repairing damages for a vessel entering the Bay of Fundy, in itself considered. It is necessary, before relief or succor of any kind can be had, to traverse that broad arm of the sea and reach the bays and harbors, properly so called, which indent the coast, and which are no doubt the bays and harbors referred to in the convention of 1818. The privilege of entering the latter in extremity of weather, reserved by the treaty, is of the utmost importance. It enables the fisherman, whose equipment is always very slender (that of the *Washington* was four men all told) to pursue his laborious occupation with comparative safety, in the assurance that in one of the sudden and dangerous changes of weather so frequent and so terrible on this iron-bound coast, he can take shelter

in a *neighboring* and friendly port. To forbid him to approach within thirty miles of that port, except for shelter in extremity of weather, is to forbid him to resort there for any purpose. It is keeping him at such a distance at sea as wholly to destroy the value of the privilege expressly reserved.

“In fact it would follow if the construction contended for by the British Colonial authorities were sustained, that two entirely different limitations would exist in reference to the right of shelter reserved to American vessels on the shores of Her Majesty’s Colonial possessions. They would be allowed to fish within three miles of the place of shelter along the greater part of the coast, while in reference to the entire extent of shore within the Bay of Fundy, they would be wholly prohibited from fishing along the coast, and would be kept at a distance of twenty or thirty miles from any place of refuge, in case of extremity. There are certainly no obvious principles which render such a construction probable.”

The undersigned now takes leave to draw Mr. Crampton’s attention to a more general consideration. He has already observed that from the first, this government has regarded a distinction which is thought to be fundamental and of much importance, between rights and liberties, or privileges. This distinction pervades the whole of the third Article of the Treaty of 1783.

By that article the *right*, not the liberty or the privilege, but the *right* to take fish of every kind on the Grand Bank & on all other Banks of Newfoundland; is expressly recognized by the Crown of England, and then it is further declared “also in the Gulf of St. Lawrence & at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish.”

This plainly is the admission of a Common right, founded on a Common origin, and standing on a Common usage.

But then the Treaty proceeds to declare, that “the inhabitants of the United States shall have *liberty* to take fish of every kind on such part of the Coast of Newfoundland as British fishermen shall use; (but not to dry or cure the same on that island) and also on the coasts, bays & Creeks of all other of his Britannic Majesty’s dominions in America; and that the American fishermen shall have liberty to dry & cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Magdalen islands and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.”

It is admitted that this is a liberty held by the inhabitants of the United States by concession and not exempted from abrogation by war.

Lord Bathurst in his letter to Mr. Adams of Oct. 30, 1815 attempts to escape from the Argument founded on the acknowledgment of this right of fishery in their Treaty of 1783, by saying that "in the third article, Great Britain acknowledges the right of the United States to take fish on the Banks of Newfoundland & other places, from which Great Britain has no right to exclude an independent nation. But they are to have the *liberty* to cure & dry them in certain unsettled places within His Majesty's territory."

The undersigned respectfully submits to the consideration of Mr. Crampton, that this remark does not cover the whole ground and is quite inconclusive.

If Great Britain intended to acknowledge in behalf of the U. S. no other right as to the fisheries, than such as she could not deny to any other foreign nation, where was the necessity to make any acknowledgment at all?

France, Spain and Portugal have always fished on the Grand Bank of Newfoundland without any permission or acknowledgment of their right by the British Government. The whole claim, if it had no other meaning than what Lord Bathurst ascribes to it, would be without effect and wholly useless. But the very words of the third article show that something more was meant than a mere acknowledgment of the right which the United States possessed, and which other nations possessed as an equal right, — for those words, to repeat them over, are

"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places, in the sea, where the inhabitants of both countries used at any time heretofore to fish."

But "Great Britain acknowledges," says Lord Bathurst, "the *right* of the United States to take fish on the Banks of Newfoundland and other places, from which Great Britain has no right to exclude an independent nation. But they are to have liberty to cure and dry them in certain unsettled places within His Majesty's territory."

It is too plain to be denied that Lord Bathurst commits a great

error in this statement of the contents of the third article. That article acknowledges not only the right of American citizens to fish where the subjects of other nations may fish ; but in express terms, the right of fishing in common with British subjects on the Grand Bank, and on all other Banks of Newfoundland ; also in the Gulf of St. Lawrence and at all other places in the sea, where the inhabitants of both Countries used at any time heretofore to fish ; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island).*

The undersigned now takes leave to draw Mr Crampton's attention to a more general consideration. He has already observed that from the first, this government has regarded a distinction which it is thought to be fundamental and of much importance between rights & liberties or privileges.

This distinction pervades the whole of the third article of the Treaty of 1783.

By that article the *right*, not the liberty or the privilege, but the *right* to fish in all seas, bays and other places where they had been used, at any time theretofore to fish, is expressly recognized by the Crown of England. And then it is further declared "And also in the Gulf of St. Lawrence & at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish."

This plainly is the admission of a common right, founded on a common origin, and standing on a common usage.

But then the Treaty proceeds to declare, "that the inhabitants of the United States shall have *liberty* to take fish of every kind, on such part of the Coast of Newfoundland as British fishermen shall use ; (but not to dry or cure the same on that island) ; and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America ; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, & creeks of Nova Scotia, Magdalen islands, and Labrador, so long as the same shall remain unsettled ; but so soon as the same, or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without

* See Articles in National Intelligencer Nos. 1 & 2 — 1852.

Here it was Mr. Webster's intention to make use of two articles in the National Intelligencer on the subject of the Fisheries which appeared in that paper of July or August 1852.

a previous agreement for that purpose with the inhabitants, proprietors and possessors of the ground."

It is admitted that this is a liberty held by the inhabitants of the United States by concession, and not exempted from abrogation by war.

